

6/1/04  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

EV 04 2248

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CITY OF NEW YORK; BOARD OF EDUCATION  
OF THE CITY SCHOOL DISTRICT OF THE CITY  
OF NEW YORK/NEW YORK CITY DEPARTMENT  
OF EDUCATION; JOEL KLEIN, in his official capacity  
as Chancellor of the city school district of the city of  
New York; and ALAN SIEGEL, in his official capacity  
as Principal of Lafayette High School,

Defendants.

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT, EDNY.

★ JUN 01 2004 ★  
AMON, J. BROOKLYN OFFICE

CONSENT DECREE

POHORELSKY, M.J.

CONSENT DECREE

WHEREAS Plaintiff, the United States of America, has filed a complaint alleging that Defendants, the City of New York ("the City"), the Board of Education of the City School District of the City of New York/New York City Department of Education ("NYCDOE"), Chancellor Joel Klein, and Lafayette High School Principal Alan Siegel, have deprived Asian students at Lafayette High School ("LHS") of the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and have deprived English Language Learner ("ELL") students of equal educational opportunities in violation of the Equal Educational Opportunities Act of 1974 ("EEOA"), 20 U.S.C. § 1701 et seq.;

WHEREAS, in July 2001, pursuant to its authority under Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c, et seq., and the EEOA, the United States initiated an inquiry into allegations of discrimination against Asian students by LHS and NYCDOE officials;

WHEREAS, in June 2003, the United States notified the NYCDOE that, based on its two-year investigation, the United States determined that LHS and NYCDOE officials had deprived Asian students at LHS of the equal protection of the laws by remaining deliberately indifferent to an objectively hostile educational environment at LHS characterized by severe and pervasive peer-on-peer harassment of Asian students based on their race and national origin; that the Defendants have denied ELL students at LHS equal educational opportunities by failing to take appropriate action to overcome language barriers that impede these students' equal participation in the school's instructional programs; and that the ELL program at LHS suffers from deficiencies in a number of areas, including assessment, class placement, academic counseling, monitoring of exited students, and communication with ELL parents and students;

WHEREAS, the Defendants deny the foregoing conduct and conclusions, and there has been no finding of liability by this or any other Court;

WHEREAS, the parties have conferred on the matter, are desirous of avoiding costly and protracted litigation, and have agreed, as indicated by the signatures of their respective counsel to this Consent Decree, to resolve the United States' claims against the Defendants without an adjudication of facts or law and according to the terms set forth herein; and

WHEREAS, the NYCDOE represents that it is working to enhance the availability of interpreter and translation services system-wide and will pilot some services at LHS;

WHEREAS, the Court, having reviewed the terms of this Consent Decree, and finding them fair, just and reasonable under all the circumstances, determines that the entry of this Consent Decree comports with federal law and is in the interest of justice. It is therefore ORDERED, ADJUDGED and DECREED as follows:

**I. SCOPE AND DURATION OF CONSENT DECREE**

A. This Consent Decree is effective immediately upon its entry by the Court and shall remain in effect until August 30, 2007.

B. The Court shall retain jurisdiction over this action until August 30, 2007, at which time the Court's jurisdiction shall end and this action shall be dismissed with prejudice, unless (1) the parties have consented to extend this Consent Decree in whole or in part, or (2) the Court has determined, on motion made by the United States as provided in this Consent Decree that Defendants have failed to substantially comply with one or more paragraphs of this Consent Decree, provided that neither the Consent Decree nor the Court's jurisdiction over this action shall terminate while such a motion is pending before the Court. The Court may order an extension of any portion of the Consent Decree that it finds the Defendants to have failed to substantially comply with, as well as any related provisions.

C. During the term of this Consent Decree, the United States may move the Court to enforce, modify or extend this Consent Decree for failure of the Defendants to substantially comply with one or more paragraphs thereof. At least thirty (30) days prior to making any such motion, the United States shall notify Defendants in writing of its intention to make such a motion, and shall provide Defendants with written notice of the grounds thereof to give Defendants an opportunity to cure the alleged violation(s) of this Consent Decree. The parties

thereafter shall attempt to resolve the allegation(s) of non-compliance in good faith without the need for judicial intervention. If the parties are unable to resolve the allegation(s) of non-compliance within thirty (30) days, the United States may file a motion seeking relief from the Court.

## **II. DEFINITIONS**

A. As used in this Consent Decree, the term “ELL student” means any student attending LHS whom LHS or NYCDOE officials determined is eligible for English Language Learner services.

B. As used in this Consent Decree, the term “ELL program” means the program used at LHS, including bilingual education and English-as-a-Second-Language (“ESL”) instruction, to serve ELL students.

C. As used in this Consent Decree, the term “parent” means a student’s parent, guardian or other person in parental or custodial relationship to the student.

D. As used in this Consent Decree, the term “harassment” means the use of derogatory language, intimidation, threats, unwanted physical contact or physical violence. The term “harassment,” as used in this Consent Decree, is not limited by any definition set forth in New York Penal Law or any other criminal statute.

## **III. COMPLIANCE FRAMEWORK**

### **A. Compliance Plan**

1. The Defendants shall develop a Compliance Plan that proposes in detail how the Defendants will satisfy the requirements set forth in sections IV and V of this Consent Decree. The Compliance Plan shall identify each paragraph in sections IV and V of this Consent

Decree by letter and number and for each paragraph shall state in detail: (1) how the Defendants propose to satisfy the obligations set forth therein, including timelines for implementation; (2) the title(s) and name(s) of the person or persons responsible for overseeing or implementing the proposed measures; and (3) the topics of the training that will be provided to personnel to implement the proposed measures and the manner in which it will be provided. Unless otherwise agreed by the parties, the Defendants shall implement each requirement set forth in sections IV and V of this Consent Decree at or by the commencement of the 2004-05 school year, except that (a) the written anti-harassment policy that section V.B. of this Consent Decree requires LHS to develop, and (b) the written standardized procedures for the evaluation of foreign transcripts pursuant to paragraph IV.B.1, below, shall be included with the Compliance Plan that the Defendants provide the United States.

2. The means the Defendants choose to implement the requirements of sections IV and V of this Consent Decree, including, but not limited to, the designation of staff members responsible for implementing the requirements, are in the Defendants' discretion, provided that the chosen means shall be reasonably calculated to effectively implement the requirements of this Consent Decree. Nothing in this paragraph shall be construed as limiting the right of the United States to seek any remedy authorized by law or equity in connection with any motion made in accordance with this Consent Decree. The Defendants may modify the Compliance Plan, provided that they comply with the notice requirements set forth in paragraph III.A.7., below, except that any modifications of the names and titles of persons identified in the Compliance Plan need not be filed with the Court, and only need be provided to the United States

at the time when the semi-annual reports required by section VI of this Consent Decree are provided to the United States.

3. The Defendants shall serve the United States with a copy of the Compliance Plan by June 18, 2004.

4. If the United States believes that the Compliance Plan does not include the required information or that any of the specific means proposed by the Compliance Plan would not be reasonably calculated to effectively implement the requirements of this Consent Decree, the United States shall so inform the Defendants within thirty (30) days of receiving the Compliance Plan.

5. If the parties are unable to resolve the United States' objections, if any, within twenty (20) days after the United States has raised them with the Defendants, the United States may then raise its objections with the Court, and the Defendants may oppose the objections. The Court will resolve the dispute, except that if the Court finds that any provision of the Compliance Plan is not reasonably calculated to effectively implement the requirements of this Consent Decree, the Defendants shall have an opportunity to revise the provision, for acceptance by the United States or approval by the Court, to include means that are reasonably calculated to effectively implement the requirements of this Consent Decree within ten (10) days of the Court's determination.

6. If the United States does not raise any objections, either with the Court or with the Defendants, then within fifty (50) days after the Defendants first submit the Compliance Plan to the United States, the parties will file the Compliance Plan with the Court, except that the

names of any LHS staff members other than the Principal shall be redacted from the Compliance Plan before it is filed with the Court.

7. If the Defendants seek to modify any provision of the Compliance Plan, the Defendants shall provide the United States with thirty (30) days written notice of the changes and the reason for the changes. If the Defendants determine that changes are needed more quickly in order to better effectuate compliance with this Consent Decree, the Defendants shall promptly notify the United States in writing, by facsimile, of the changes and the reasons for the changes. If the United States believes that the Defendants' proposed modification(s) of the Compliance Plan are not reasonably calculated to effectively implement the requirements of this Consent Decree, the United States shall inform the Defendants of its objections within twenty (20) days after receiving notice of the proposed modification(s). If the parties are unable to resolve the United States' objections, if any, within ten (10) days after the United States has raised them with the Defendants, the United States may then raise its objections with the Court, and the Defendants may oppose the objections. The Court will resolve the dispute, except that if the Court finds that any proposed modification of the Compliance Plan is not reasonably calculated to effectively implement the requirements of this Consent Decree, the Defendants shall have an opportunity to revise the proposed modification, for acceptance by the United States or approval by the Court, to include means that are reasonably calculated to effectively implement the requirements of this Consent Decree. If the United States does not raise any objections, either with the Court or with the Defendants, then within thirty (30) days after the Defendants first submit the Compliance Plan modification to the United States, the parties will file the Compliance Plan modification with the Court. The Defendants shall notify the United

States in the semi-annual reports required by section VI of this Consent Decree of any modifications of the names and titles of persons identified pursuant to paragraph III.A.1(2), above, and such modifications need not be filed with the Court.

8. If after the filing of the Compliance Plan or any modification of the Compliance Plan, the United States determines that a provision or modified provision of the Compliance Plan has failed to effectively implement any requirement of the Consent Decree and that such ineffectiveness amounts to substantial non-compliance with one or more paragraphs of the Consent Decree, the United States may seek relief in accordance with paragraph I.C above. If the Parties are unable to resolve the issues raised by the United States within thirty (30) days after the notification by the United States to the Defendants, the United States may seek modification of the Compliance Plan to effectively implement the requirements of the Consent Decree as relief in connection with any motion to modify, enforce or extend the Consent Decree made in accordance with paragraph I.C.

**B. Monitoring**

1. The United States may review the Defendants' progress in implementing the requirements of section IV of this Consent Decree and the Compliance Plan, as long as this Decree remains in effect. The United States may retain one or more consultants to assist in this process. The NYCDOE shall provide the United States, and its consultant(s), if any, reasonable access to the LHS building and NYCDOE personnel within two weeks of receiving written notice from the United States, and shall cooperate fully with the review, which may include reasonable document requests, on-site visits of classes, on-site reviews of relevant student records or files, interviews with teachers and administrators at times when they are not in class,



and interviews with students, provided that before interviewing a student under the age of eighteen, the United States obtains the consent of the student's parents.

2. The United States also may review the Defendants' progress in implementing the anti-harassment measures required by section V of this Consent Decree and the Compliance Plan, as long as this Decree remains in effect. The United States may retain one or more consultants to assist in this process. The Defendants shall provide the United States, and its consultant(s), if any, reasonable access to the LHS building and NYCDOE personnel within two weeks of receiving written notice from the United States, and shall cooperate fully with the review, which may include reasonable document requests, on-site reviews of relevant student records or files, interviews with teachers and administrators at times when they are not in class, and interviews with students, provided that before interviewing a student under the age of eighteen, the United States obtains the consent of the student's parents. With the reasonable assistance of LHS personnel, the United States may conduct annual surveys and use other reasonable methods to assess the presence and effect of student-on-student harassment based on race, color or national origin at LHS.

3. The United States and its consultant(s) will provide the Defendants with reasonable notice identifying either by type or by name any student records or files that they seek to review, and will work with the Defendants to devise a plan or methodology for the compliance monitoring process to accommodate students' and their families' privacy concerns. The United States and the Defendants will also develop a mutually agreed upon confidentiality agreement to govern the disclosure of information gathered as part of the compliance monitoring process to third parties, to the United States' consultant(s), and to the Court.

#### **IV. ENGLISH LANGUAGE LEARNER PROGRAM**

##### **A. Assessment**

1. Beginning with the 2004-05 school year, the NYCDOE shall ensure that the Language Assessment Battery Revised ("LAB-R") test is appropriately administered at LHS to determine (1) the eligibility for participation in the ELL program of a potential ELL student who has not previously been evaluated for eligibility by the NYCDOE, and (2) the appropriate ESL class level for each student found to be eligible for participation in the ELL program.

2. The NYCDOE shall ensure that LHS guidance and ELL assessment and placement personnel and the parent coordinator are trained in NYCDOE procedures for identifying, assessing and placing ELL students.

3. At any time while this Consent Decree remains in effect, the NYCDOE may change the assessment system it uses. If the NYCDOE plans to make such a change, the NYCDOE shall notify the United States of this decision no later than forty-five (45) days prior to implementing the new system, or within a reasonable time after receiving notice of a change by the State of New York if NYCDOE receives less than 45 days notice from the State that it must implement such a change, and shall furnish the United States with a description of the new system and identify who developed it. The NYCDOE shall provide the United States with any additional information regarding the new system as the United States reasonably may request within fifteen (15) days of such request. Upon receiving any such requested information from the NYCDOE, or upon receipt of the NYCDOE's initial notification if no request for additional information is made, the United States shall have forty-five (45) days to raise any concerns or objections with the NYCDOE before it may file any objections with the Court, except that the

United States may not file any objections with the Court against the City, the NYCDOE or any of their employees if the change in the assessment system was developed and mandated by the State of New York.

**B. Class Placement**

1. The NYCDOE shall ensure that if a new entrant to LHS provides a transcript in a language other than English, LHS will arrange for the transcript to be evaluated in accordance with standardized procedures that will be distributed to all LHS guidance staff.

2. The NYCDOE shall ensure that each ELL student is placed in the appropriate ESL and bilingual classes, if the student is to take a bilingual class, within ten (10) school days of the student's enrollment or within ten (10) school days of the start of the school year, whichever is later.

3. In complying with paragraph IV.B.2, above, the NYCDOE shall ensure that (a) each ELL student in a bilingual education class at LHS is taught in a non-English language that the student understands; and (b) each ELL student is placed in the appropriate level ESL class as indicated by the student's score on the LAB-R, the New York State English as a Second Language Achievement Test ("NYSESLAT"), and any other test used to place ELL students among ESL levels. The NYCDOE shall ensure that if an ELL student is placed in a manner that contradicts the foregoing obligations, the student is assigned to an appropriate ELL program class, or to the appropriate level ESL class, within three (3) school days from the date when the discrepancy is identified. The NYCDOE also shall ensure that LHS identifies a staff member responsible for ensuring that the foregoing obligations are met and that each teacher of a bilingual class at LHS is instructed to notify the designated staff member immediately if a

student is placed in his or her class but does not speak the foreign language of instruction. The parties agree that Mandarin-speaking students who do not understand Cantonese should not be placed in a bilingual class where oral instruction is provided in Cantonese, and that Cantonese-speaking students who do not understand Mandarin should not be placed in a bilingual class where oral instruction is provided in Mandarin.

4. The NYCDOE shall take appropriate measures to minimize any interference with ELL students' equal participation in LHS's instructional programs that may result from the placement of more than the optimal number of ELL students in an ELL class and shall take reasonable steps to reduce the likelihood of such overcrowding. Appropriate measures may include the assignment of additional teacher's aides to any such classes, tutoring programs for students in such classes, or other measures that the NYCDOE deems appropriate. The parties agree that, for the purposes of this Consent Decree, the optimal number of ELL students in an ELL class shall not be less than the maximum number of students that the NYCDOE's collective bargaining agreement with the New York City teacher's union that is in effect at the time permits to be placed in any class.

**C. Academic Counseling**

1. The NYCDOE shall ensure that whenever an LHS guidance counselor or LHS administrator acting in his or her administrative capacity has a scheduled meeting with an ELL student about any topic concerning that student's participation in the school's instructional program--including information on the ELL program; annual academic planning; course, credit and graduation requirements (including the option to attend night school or to remain at LHS to complete the student's education, if such topics are discussed); transcript review and class or

grade placement; attendance or lateness problems; risk of retention, dropout or significant academic failure--and, in meetings with guidance counselors regarding disciplinary actions that could result in missed class time, the communication shall be in a language the student understands as provided in subparagraphs (a) and (b), below:

(a) for ELL students identified through the LAB-R, NYSESLAT, or successor test that was most recently administered to the student as at the Beginner level for ESL, all of the information communicated shall be communicated either orally or in writing in the student's primary language for students whose primary language is spoken at home by 100 or more New York City public school students, and for other students to the extent practicable, unless the student affirmatively states that he or she is able to communicate effectively in English about the subject being discussed or that he or she does not want interpretation or translation services;

(b) for ELL students identified through the LAB-R, NYSESLAT or successor test that was most recently administered to the student as at the Intermediate or Advanced level for ESL, the information may be communicated in English, except that interpreter services shall be provided for students whose primary language is spoken at home by 100 or more New York City public school students, and for other students to the extent practicable, if in the judgment of the guidance counselor or administrator, the student needs interpreter services in order to communicate effectively about the subject that is being discussed, or if interpreter services are requested by the student. If interpretation or translation services are required, the LHS guidance counselor must schedule the appointment for a time when such services and the student are available.

The NYCDOE shall identify in the Compliance Plan the interpretation or translation services that LHS may employ:

2. For the purposes of Section IV.C, IV.F. and V.D.1 of this Consent Decree, it shall be deemed practicable for the NYCDOE to provide communication in a language spoken by fewer than 100 New York City public school students if the NYCDOE, using reasonable efforts, can provide interpreter or translation services in that language through the use of qualified NYCDOE employees assigned to LHS or a qualified contract interpreter agency. For the duration of this Consent Decree, the NYCDOE shall notify the United States in writing of the following information within three weeks of the beginning of each semester, on November 1, May 1, and within one week following the end of each school year: (1) the language(s) spoken by LHS ELL students at home that are not spoken at home by 100 or more New York City public school students, and the number of LHS ELL students who speak each such language; and (2) whether NYCDOE has determined that providing interpretation or translation services in any such language would not be practicable and, if so, the language(s) for which services would not be practicable and the reason(s) therefor.

3. The NYCDOE shall ensure that LHS provides written notice to ELL students of the availability of interpreter and translation services in the circumstances set forth in paragraph IV.C.1. no later than October 1 of each school year, or before the first meeting covered by paragraph IV.C.1. occurs, if such a meeting occurs before October 1 of any year, and, for ELL students who enroll after notice has been provided to other students, no later than 10 school days after the student is identified as eligible for the ELL program. The written notification shall be provided in ten languages and shall make clear that such services will be provided at no cost to

the student. For an ELL student whose primary language is not one of the ten languages in which the NYCDOE has provided written notice, once per year, at or before the beginning of that student's first meeting covered by paragraph IV.C.1, the student shall be provided notice in a manner designed to ensure the student's understanding of the availability of the interpretation or translation services required by paragraph IV.C.1. and that such services will be provided at no cost to the student.

4. The NYCDOE shall ensure that LHS guidance counselors and administrators meet with ELL students in all circumstances pertaining to student's participation in the school's instructional program under which LHS guidance counselors or administrators regularly meet with non-ELL students at LHS.

**D. ELL Teachers**

The NYCDOE shall ensure that each teacher of an ELL program class is certified or otherwise qualified to teach the subject matter of the course, teach ELL students, and teach in the language of instruction. The NYCDOE shall explain in its Compliance Plan how it will ensure that such teachers are so qualified.

**E. Recently Exited ELL Students**

The NYCDOE shall ensure that LHS makes available to each student who has completed the ELL program transitional services to facilitate the student's transition into the mainstream English instructional program; that such transitional services shall be available for one year after the student exits the ELL program; and that LHS informs each ELL student upon exiting the ELL program of the availability of the transitional services.

**F. Communication with ELL Parents**

1. The NYCDOE shall ensure that whenever a parent of an ELL student meets with an LHS teacher, administrator, or guidance counselor for a parent-teacher conference or any other scheduled meeting, whether in person or by telephone, concerning the ELL student's participation in the school's instructional program, interpreter services shall be provided for parents of ELL students whose primary language is spoken at home by 100 or more New York City public school students, and for parents of other ELL students to the extent practicable, if interpreter services are requested by the parent, or if in the LHS staff member's judgment, the parent needs interpreter services in order to communicate effectively about the subject that is being discussed. Appointments for such meetings shall be scheduled for a time when the parent, the LHS staff member and interpretation or translation services are available. The NYCDOE shall identify in the Compliance Plan the interpretation or translation services that LHS may employ.

2. The NYCDOE shall ensure that LHS makes available to parents of ELL students who speak a language spoken at home by 100 or more New York City public school students, and to other parents of ELL students to the extent practicable, assistance in interpreting or translating documents intended for parents concerning students' participation generally, or the individual student's participation, in the school's instructional program.

3. The NYCDOE shall ensure that LHS provides written notice to ELL parents of the availability of interpreter and translation services in the circumstances set forth in paragraphs IV.F.1. and IV.F.2. no later than October 1 of each school year, or before the first meeting covered by paragraph IV.F.1. occurs, if such a meeting occurs before October 1 of any



year, and, for parents of an ELL student who enrolls after such notice has been provided to other parents, no later than 10 school days after the ELL student is identified as eligible for the ELL program. The written notification shall be provided in ten languages and shall make clear that such services will be provided at no cost to the parents. For an ELL student's parent whose primary language is not one of the 10 in which the NYCDOE has provided written notice and who speaks a language spoken at home by 100 or more New York City public school students, and for all other ELL students' parents to the extent practicable, the NYCDOE shall: once per year, at or before the beginning of that parent's first meeting covered by paragraph IV.F.1, provide notice to the parent in a manner designed to ensure the parent's understanding of the availability of the interpretation or translation services required by paragraphs IV.F.1 and IV.F.2. and that such services will be provided at no cost to the parents.

4. The NYCDOE shall translate the preprinted text of the following documents into Spanish, Chinese, Russian, Bengali, Haitian Creole and Urdu: (a) written parent orientation materials concerning the ELL program; (b) any form documents used by LHS to notify parents of graduation requirements; (c) any form letters used by LHS to notify parents that a child's promotion to the next grade is in doubt; and (d) LHS's "Report to Parents" or any successor form document used to notify parents that a student is not progressing satisfactorily. The NYCDOE shall ensure that LHS distributes to each ELL parent in the same manner as notices are distributed to other parents a translation of each document that the parent can understand, provided however that if the parent does not speak Spanish, Chinese, Russian, Bengali, Haitian Creole or Urdu, LHS shall distribute the English-language version of each document to the parent. Such English-language documents will be accompanied by written

notification that, upon request, LHS will make available to parents assistance in interpreting and translating these documents. LHS shall make available to parents assistance in interpreting or translating such documents pursuant to paragraph IV.F.2, above.

**G. Use of Student Interpreters**

The NYCDOE shall ensure that LHS instructs all staff by June 1, 2004, that students shall not be used as interpreters except in emergency situations.

**V. HARASSMENT**

**A. General Provisions**

1. Defendants shall not respond unreasonably to allegations of student-on-student harassment on the basis of race, color or national origin at LHS;
2. Defendants shall not retaliate against any student or employee because that student or employee has alleged or opposed student-on-student harassment on the basis of race, color or national origin at LHS, or because that student or employee has participated or assisted in making or filing a complaint against LHS or NYCDOE officials concerning student-on-student harassment on the basis of race, color or national origin. The parties agree that nothing in this paragraph shall be construed as creating a private right of action for, or authorizing intervention in this action by, any individual.

**B. Anti-harassment Policy**

1. The NYCDOE shall ensure that LHS develops a policy that clarifies the obligations of LHS personnel to report incidents of student-on-student harassment based on race, color or national origin that LHS personnel witness or of which they have received reports, whether such incidents are verbal or physical.

2. The policy shall a) require LHS to implement reasonable measures designed to prevent student-on-student harassment based on race, color or national origin, to investigate complaints of such harassment fully and promptly, and to discipline perpetrators of such harassment appropriately; b) define student-on-student harassment based on race, color or national origin, and provide written examples of such harassment; c) identify LHS staff members to whom reports of student-on-student harassment based on race, color or national origin may be made, provided that at a minimum the policy shall provide for reports to be accepted either in writing or orally by any of the following: teachers, guidance counselors, coaches, administrators, and the "LHS designated staff member" required by paragraph V.C.2, below; d) require any LHS personnel who has received such a complaint of harassment to report it to the LHS designated staff member; e) provide reasonable means by which ELL student-victims can communicate their complaints in a language they understand; f) require all LHS personnel to report to the LHS designated staff member any student-on-student harassment that they witness or have reason to believe occurred, and that they have reason to believe may be based on race, color or national origin; g) encourage LHS personnel to intervene to stop any such harassment that they witness, unless circumstances would make such intervention dangerous; h) prohibit retaliation against those who report such harassment or assist in an investigation; and i) identify a NYCDOE office outside of LHS to which a parent or student may file a complaint concerning the response by LHS to a complaint of student-on-student harassment based on race, color or national origin and the method of filing such complaint.

**C. Prevention of Harassment**

1. The NYCDOE shall ensure that LHS develops and distributes to students written materials that explain the LHS anti-harassment policy described in paragraphs V.B.1. and V.B.2, above; what student-on-student harassment based on race, color or national origin is; the LHS personnel to whom such harassment may be reported; and the name of the LHS staff member responsible for investigating complaints of such harassment. Such materials may include handouts for students or posters. The written materials given to students or posted for students to see shall be printed in English, Chinese, Urdu, Arabic and Bengali and shall be otherwise communicated to all Asian students at LHS in a manner that facilitates their understanding. LHS shall complete the development and distribution of the materials required by this paragraph before October 1, 2004.

2. The NYCDOE shall, before the beginning of the 2004-05 school year, ensure that LHS designates one LHS dean or administrator ("LHS designated staff member") responsible for receiving reports of student-on-student harassment that may be based on race, color or national origin from students or from LHS or New York City Police Department ("NYPD") personnel who have received such harassment complaints from a student. LHS shall ensure, with primary responsibility upon the LHS designated staff member, that all such reports of such harassment are investigated fully and promptly and that the perpetrators of such harassment are referred to the appropriate school official for disciplinary action.

3. The NYCDOE shall ensure that the "LHS designated staff member" and any personnel assigned to assist the LHS designated staff member are trained on how properly to investigate and otherwise respond to each allegation or complaint of student-on-student

harassment that may be based on race, color or national origin. Such training shall be completed no later than October 1, 2004.

4. The NYCDOE shall ensure that LHS implements training of teachers, administrators, school aides, deans, guidance counselors and any LHS personnel charged with supervising the behavior of students, on procedures for reporting instances of possible student-on-student harassment based on race, color or national origin, and on how to recognize, prevent and respond appropriately to such harassment. Such training shall occur at least once each school year, with the initial training to be completed no later than October 1, 2004.

5. The City of New York shall ensure that all NYPD School Safety Agents assigned to LHS, including supervisors, (SSAs) receive the training required by paragraph V.C.4, above, and are instructed to report to appropriate LHS personnel any complaints they receive from students of student-on-student harassment that is reported as being, or that the SSAs have reason to believe may be, based on race, color or national origin. The NYCDOE shall identify in its Compliance Plan the types of LHS personnel to whom it would be appropriate for an SSA to report such harassment.

6. The NYCDOE shall ensure that LHS develops a student committee to address matters concerning student-on-student harassment based on race, color or national origin.

7. The NYCDOE shall ensure that LHS conducts annual diversity and tolerance training for students over the course of each school year, and that students play an active role in providing the training.

**D. Responding to Harassment**

1. LHS officials shall fully and promptly investigate complaints of student-on-student harassment that may be based on race, color or national origin, discipline appropriately students determined to be responsible for such harassment, and make reasonable efforts to keep parents informed of the school's actions in response to such harassment in a language the students and parents understand in accordance with the interpretation and translation requirements set forth in paragraphs IV(C)(1)-(2) and F, above.

2. LHS shall offer appropriate counseling services from LHS guidance counselors to victims of student-on-student harassment that the student alleges or LHS has determined is based on race, color or national origin.

3. The LHS principal or the principal's designee shall meet with the victims of serious incidents of student-on-student harassment that may be based on race, color or national origin and their parents upon request.

4. LHS officials shall report all incidents of student-on-student harassment that may be based on race, color and national origin and that may involve criminal conduct to the NYPD.

**E. Record-Keeping**

The NYCDOE shall ensure that LHS maintains a written record ("Harassment Complaint Report") of each and every complaint, whether verbal or in writing, reported to the "LHS designated staff person" of student-on-student harassment concerning harassment that any victim, complainant, reporter or witness of an incident indicates, or that LHS has reason to believe, may be based on race, color or national origin, whether or not any school personnel

believe the harassment to be so motivated. The Harassment Complaint Report shall, at a minimum, include (1) the name and race of the alleged victim and, if different, the name of the person reporting the allegation; (2) the nature of the allegation and the date of the alleged incident; (3) the names and races of all persons alleged to have committed the alleged harassment, if known; (4) the names of all known witnesses to the alleged incident; (5) any written statements of the reporter, the victim (if different from the reporter), the alleged perpetrator, and any witnesses; (6) the outcome of the investigation; and (7) any action taken by LHS or other NYCDOE officials, including the date the incident was reported to the NYPD, if applicable. The Harassment Complaint Report shall be completed by the LHS designated staff member or other LHS personnel assigned to assist the LHS designated staff member. Items (1) through (6) shall be completed no later than fifteen (15) calendar days after the date upon which the complaint is first made, and, if any action is taken, as discussed in Item (7), such action shall be done promptly and reported in the Harassment Complaint Report.

## **VI. REPORTING REQUIREMENTS**

The Defendants shall keep the records necessary to report the information required by this section. The Defendants shall provide the following information to the United States by November 1 and May 1 of each academic year while this Decree remains in effect:

### **A. English Language Learner Program**

1. The name of the test used at LHS at the time of the report to assess whether students are eligible for participation in the ELL program and to determine the proper placement of ELL students among ESL class levels; and a description of the method LHS uses to place ELL students in ELL program levels and classes; provided that after the first report made

pursuant to this Consent Decree, the NYCDOE need only provide such policies and procedures if they have changed in any way since the last report, in which case the NYCDOE shall provide the revised or new policies and procedures and indicate how such policies or procedures have changed.

2. (a) The name of each ELL student placed in an ESL class at LHS; the date that the student was enrolled at the school; the language spoken by the student at home; if the student took the LAB-R or NYSESLAT during the reporting period in order to determine eligibility or continuing eligibility for the ELL program at LHS, the student's score on the LAB-R or NYSESLAT examination, whichever is taken (or, should either test be discontinued, its successor examination(s)); the level of the ESL class to which the student was assigned; and the language of instruction of any bilingual class to which the student is assigned. (b) The name of each ELL student assigned or reassigned to an ESL or bilingual class more than ten (10) school days after the student enrolled in the school; the reason why placement occurred more than ten (10) school days after enrollment or the reason for the reassignment; the names of the class to which each such student initially was assigned and the name of the class to which each student was reassigned.

3. The name of each teacher of a bilingual or ESL class at LHS; the teacher's relevant areas of certification, and for bilingual classes, the languages of instruction; and the means by which LHS ensured that the teacher met the requirements of section IV.D. of this Decree.

4. The number of students exited from the ELL program, by grade and date, based on the NYSESLAT (or any successor test, should the NYSESLAT be discontinued) given



during the reporting period and how LHS informed these students of the transitional services available.

5. The dates of each training session required by section IV, above, and any training sessions provided for in the Compliance Plan with regard to the ELL program; copies of the agendas of, and any training materials-provided or used at, each such session; the name and qualifications of the instructor of each such training session; and copies of sign-in sheets containing the name and position of each person trained at each such training session.

6. A list identifying all documents that the LHS administration has distributed to parents and communicated in a language other than English and the languages into which the documents were translated.

**B. Harassment**

1. Copies of LHS's policies and procedures for preventing, identifying, reporting and responding to student-on-student harassment on the basis of race, color or national origin, provided that after the first report made pursuant to this Decree, the NYCDOE need only provide such policies and procedures if they have changed in any way since the last report, in which case the NYCDOE shall provide the revised or new policies and procedures and indicate how such policies or procedures have changed.

2. Copies of all notices that relate to such policies and that were distributed to employees, students and parents; the timing and means of distribution of such notices; and each language in which the information in each such document was translated.

3. The name of the "LHS designated staff member" designated pursuant to paragraph V.C.2. and any other titles, offices or positions that person may hold at the school.

4. The dates of each training session required by section V of this Consent Decree and any anti-harassment training sessions provided for in the Compliance Plan; copies of any agendas of, and any training materials provided or used at, each such session; the name and qualifications of the instructor of each training session; and copies of sign-in sheets containing the name and position of each person trained at each session, except for those sessions training students pursuant to paragraph V.C.7. of this Decree.

5. Copies of all LHS Harassment Complaint Reports that were created during the reporting period.

6. Copies of all LHS Occurrence Report forms that were created during the reporting period, provided that after the first report, the NYCDOE need only provide copies of Occurrence Reports if requested by the United States.

7. The number of NYPD School Safety Agents assigned to LHS; the dates on which each School Safety Agent assigned to LHS participated in the training required by paragraph V.C.5. of this Decree; and the name and title of the instructor of the training session.

8. A description of the student committee required by paragraph V.C.6. of this Decree; its name; how it was developed; the number of students by grade and race participating in the committee; and how many times it met during the reporting period.

**C. Additional Information**

The United States may request reasonable clarifications of, or supplementation to, the reports required by this section. The Defendants shall provide such clarification and supplementation and permit the inspection and copying of supplemental materials as the United States reasonably may request.

**VII. STIPULATED PENALTIES**

**A. Penalties**

If the NYCDOE fails to comply with any requirement of this Consent Decree that is enumerated specifically in section VII, the Defendants shall pay stipulated penalties as follows for each day that the fulfillment of the requirement is late, unless the Defendants have obtained an extension of the deadline by written agreement among the parties or by order of the Court, provided, however, that nothing in this section shall be construed to limit the right of the United States to seek enforcement of this Consent Decree by motion to the Court in accordance with paragraph I(C) above:

<u>Days late</u>	<u>Penalty per day</u>
4-14	\$150
15-30	\$250
31-60	\$500
after 60 days	\$1000

**B. Compliance Plan**

If the Defendants fail to provide the United States with a copy of their Compliance Plan by June 18, 2004, as required by paragraph III.A.3. of this Decree, or if the Defendants have failed by that date to include in full LHS's completed proposed anti-harassment policy required by paragraph V.B. of this Decree, or the standardized procedures for the evaluation of foreign transcripts required by paragraph IV.B.1. of this Decree, and the Defendants have not obtained an extension of the limit whether by agreement among the parties or by order of this Court, the Defendants shall pay to the United States Department of Justice a stipulated penalty as set forth in paragraph VII.A, above.

**C. Training of the Designated LHS Administrator**

If the Defendants fail to train the "LHS designated staff member" or those personnel assigned to assist the LHS designated staff member, as required by paragraph V.C.3. of this Consent Decree, before October 1, 2004, and the Defendants have not obtained an extension of this deadline whether by agreement among the parties or by order of this Court, the Defendants shall pay to the United States Department of Justice a stipulated penalty as set forth in paragraph VII.A, above, and until the NYCDOE provides the required training.

**D. Training of LHS personnel generally**

If the Defendants fail to provide training sessions for LHS personnel as required by paragraph V.C.4. of this Decree, before October 1, 2004, and the Defendants have not obtained an extension of this deadline whether by agreement among the parties or by order of this Court, the Defendants shall pay to the United States Department of Justice a stipulated penalty as set forth in paragraph VII.A, above, and until the Defendants provide the required training.

**E. Presentation to Students**

If LHS fails to develop and distribute the materials required by paragraph V.C.1. of this Decree before November 1, 2004, the Defendants shall pay to the United States Department of Justice a stipulated penalty as set forth in paragraph VII.A, above, and until LHS develops and distributes the required materials.

**VIII. NOTICES, SUBMISSIONS AND DEMANDS**

**A. Addresses**

Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent, or a demand for stipulated penalties is made,

it shall be directed to the individuals at the addresses specified below. Any party may change the designated person or address by written notice to all the other designated recipients.

To the United States

Pamela Chen  
Assistant United States Attorney  
Chief, Civil Rights Litigation  
Eastern District of New York  
1 Pierrepont Plaza  
Brooklyn, New York 11201  
Tel. (718) 254-7000  
Fax (718) 254-6326

Edward G. Caspar  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section  
950 Pennsylvania Ave., NW  
Patrick Henry Building, Suite 4300  
Washington, D.C. 20530  
Tel. (202) 514-4092  
Fax (202) 514-8337

To the New York City Law Department

Lisa Grumet  
Assistant Corporation Counsel  
Theresa Crotty  
Assistant Corporation Counsel  
New York City Law Department  
100 Church Street  
New York, New York 10007  
Tel.: (212) 788-1165 or (212) 788-8703  
Fax: (212) 788-0877

**B. Certification**

All monitoring reports submitted by the NYCDOE to the United States as required by Section VI of this Consent Decree shall be accompanied by the following certification:

I certify, under penalty of law, that the information contained in or accompanying this submission is true, accurate and complete based upon representations as to accuracy and completeness made to me either orally or through submission of documentation by appropriate personnel with responsibility for the matters contained herein.

**IX. NON-WAIVER PROVISION**

The United States does not waive any rights or remedies available to it concerning matters not alleged in the complaint in this action for any violation by the Defendants of the EEOA, the Fourteenth Amendment to the United States Constitution, or any other federal statutes or regulations. This Consent Decree does not limit or affect the rights and remedies as against any persons who are not parties to this Consent Decree, and the United States reserves all such rights and remedies.

**X. ENTIRE AGREEMENT**

A. This Consent Decree constitutes the entire agreement between the United States and the Defendants, and supersedes all prior understandings, whether oral or written, between the parties.

B. Nothing contained herein shall be deemed to be an admission by Defendants of liability or of the truth of any of the allegations set forth in the complaint, or that they have in any manner or way violated the rights of any person, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, the City of New York, NYCDOE, or any other rules regulations or bylaws of any department or subdivision thereof.

C. This Consent Decree is entered by the parties solely for the purposes of settlement, and is tailored to the allegations by the United States concerning the circumstances at

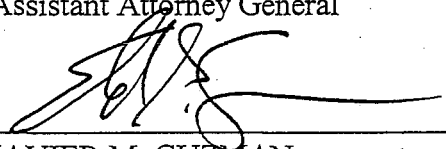
LHS. This Consent Decree does not reflect the positions of the parties in any other judicial or administrative action or proceeding.

**XI. INDICATION OF ASSENT**

By the signatures of their counsel on this and the following pages, the parties agree to, and request the entry of, this Consent Decree.

**For the United States:**

R. ALEXANDER ACOSTA  
Assistant Attorney General

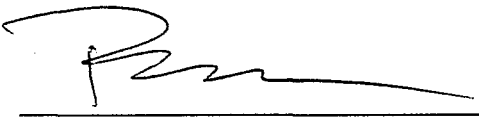


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JAVIER M. GUZMAN  
SUNIL H. MANSUKHANI  
EDWARD G. CASPAR  
Attorneys  
U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section  
950 Pennsylvania Ave., NW  
Patrick Henry Building, Suite 4300  
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Tel. (202) 514-4092  
Fax (202) 514-8337

5/24/04  
Date Signed

ROSLYNN MAUSKOPF  
United States Attorney  
Eastern District of New York



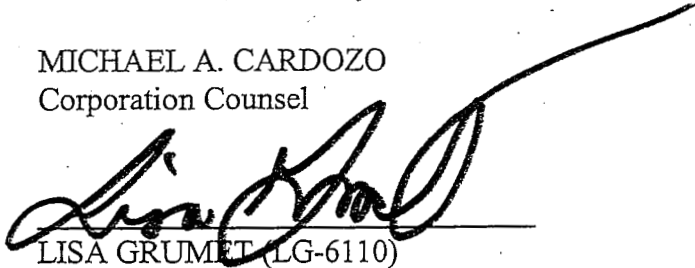
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PAMELA CHEN (4167425)  
Assistant United States Attorney  
Chief, Civil Rights Litigation  
Eastern District of New York  
1 Pierrepont Plaza  
Brooklyn, New York 11201

5/27/04  
Date signed

**For the Defendants City of New York, et al.:**

MICHAEL A. CARDOZO  
Corporation Counsel



LISA GRUMET (LG-6110)  
Assistant Corporation Counsel  
THERESA CROTTY (TC-8204)  
Assistant Corporation Counsel  
New York City Law Department  
100 Church Street  
New York, New York 10007

5/25/04  
Date Signed

ORDERED, this \_\_\_\_ day of \_\_\_\_\_ 2004.

\_\_\_\_\_  
United States District Judge