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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
AB, an infant, by her aunt and legal guardian, CD;	:
EF; GH, an infant, by her father and natural	:
guardian IJ; KL; and CATHY CONLEY,	:
Plaintiffs,	: <u>CONSENT DECREE</u>
- against -	:
RHINEBECK CENTRAL SCHOOL DISTRICT,	:
and THOMAS MAWHINNEY,	:
Defendants.	: 03 Civ. 3241 (SCR) (GAY)
-----X	
UNITED STATES OF AMERICA,	:
Plaintiff-Intervenor,	:
- against -	:
RHINEBECK CENTRAL SCHOOL DISTRICT,	:
Defendant.	:
-----X	

WHEREAS, on May 9, 2003, plaintiffs Beth Ann Van Tassel ("AB" in the caption), Jeannine Surrico ("EF" in the caption), Laura Dewitt ("GH" in the caption), and Michelle Wyant ("KL" in the caption), who are former students of Rhinebeck Central High

School (the "High School") in Rhinebeck, New York; Jennifer Berry, Beth Van Tassel's aunt and former legal guardian ("CD" in the caption); Robert Dewitt, Laura Dewitt's father ("IJ" in the caption); and Cathy Conley ("Conley"), an employee at the High School (collectively, the "private plaintiffs"), filed a complaint in this Court against the Rhinebeck Central School District (the "District") and Thomas Mawhinney ("Mawhinney"), then the Principal of the High School, alleging that the District and Mawhinney were in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88, as a result of sexual harassment of the former student plaintiffs, and retaliation against plaintiff Conley, among other allegations; and

WHEREAS, on August 29, 2003, the private plaintiffs amended their complaint; and

WHEREAS, in their answers to the private plaintiffs' complaint and amended complaint, defendants denied the private plaintiffs' claims; and

WHEREAS, the United States of America (the "Government") moved to intervene in the action with respect to the claims of the former student plaintiffs against the District, and on August 25, 2004, the Court granted the Government's motion; and

WHEREAS, in its answer to the Government's complaint-in-intervention, the District denied the Government's claims; and

WHEREAS, on March 23, 2005, the Court dismissed claims brought by plaintiff Michelle Wyant on the ground that they were barred by the statute of limitations; and

WHEREAS, Mawhinney is no longer Principal of the High School or working for the District, and he is not working in elementary or secondary school education; and

WHEREAS, the parties desire to avoid costly and protracted litigation and have

agreed to resolve the private plaintiffs' and the Government's claims against defendants without the necessity of a trial;

NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I. FACTUAL BACKGROUND

A. The District is organized, and exists, pursuant to the laws of the State of New York and is responsible for administering educational services for all students enrolled in the District, including students at the High School. The District is a recipient of Federal financial assistance and therefore is subject to Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. §§ 1681-1688, which prohibits recipients of Federal financial assistance from discriminating on the basis of sex in educational programs or activities.

B. The private plaintiffs and the Government contend that over the ten year period from 1993 through 2003, Mawhinney subjected the former student plaintiffs and other female students at the High School to unwelcome sexual harassment that constituted discrimination on the basis of sex. The private plaintiffs and the Government contend that the sexual harassment to which the former student plaintiffs and other female students at the High School were subjected was severe, pervasive and objectively offensive.

C. The private plaintiffs and the Government contend that Mawhinney's behavior with respect to the former student plaintiffs and other female students at the High School created a hostile educational environment.

D. The private plaintiffs and the Government contend that District officials with authority to rectify the situation received actual notice of incidents in which Mawhinney

sexually harassed the former student plaintiffs and other female students at the High School, and that District officials were deliberately indifferent to the sexual harassment to which the former student plaintiffs and other female students at the High School were subjected.

E. The private plaintiffs and the Government contend that the District's deliberate indifference prevented the former student plaintiffs and other female students at the High School from enjoying the educational benefits and opportunities provided by the District.

F. Conley contends that Mawhinney retaliated against her in violation of Title IX.

G. The District denies each and every one of these contentions.

II. SCOPE AND DURATION OF THE CONSENT DECREE

A. This Consent Decree is effective immediately upon its entry by the Court and shall remain in effect for three (3) years from the date of entry or ninety (90) calendar days after the last report under Section VII is received, whichever date is later, absent an extension as set forth in Section II.C.

B. The Court shall retain jurisdiction over this action during the three-year period specified above, absent an extension as set forth in Section II.C., to ensure compliance with all provisions of this Consent Decree and to resolve any dispute that may arise under this Consent Decree.

C. The Government may move the Court to extend the period in which this Consent Decree is in effect if the Government determines that the District has failed to perform in a timely manner any act required by the Consent Decree or otherwise acts in violation of any provision of the Consent Decree, or if the interests of justice otherwise require an extension of

the period in which this Consent Decree remains in effect.

D. The parties to this Consent Decree shall endeavor in good faith to resolve informally any differences regarding interpretation of, and compliance with, this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event that the District either fails to perform in a timely manner any act required by this Consent Decree or otherwise acts in violation of any provision of this Consent Decree, the Government may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order extending the period during which this Consent Decree is in effect and requiring performance or non-performance of certain acts and an award of any damages, costs, and attorneys' fees that may have been occasioned by the District's actions or non-actions.

E. The parties agree that the time limits set forth throughout this Consent Decree may be extended upon mutual consent of the parties.

III. GENERAL INJUNCTIVE RELIEF

The District, its agents, employees, successors, and all persons in active concert or participation with it, are enjoined from:

A. Engaging in any act or practice that discriminates against any student on the basis of that student's sex in the administration or provision of educational services, programs, opportunities or benefits;

B. Failing to respond promptly and appropriately to allegations of harassment or discrimination on the basis of sex;

C. Retaliating against any student or employee because that student or employee has alleged, filed, or participated in a complaint with the District or any federal, state,

local or non-governmental entity concerning harassment or discrimination on the basis of sex.

IV. RETENTION OF EXPERT/DEVELOPMENT OF COMPREHENSIVE PLAN
AND TRAINING PROGRAM

A. The District shall retain an expert in the area of sexual harassment prevention and training in the context of elementary/secondary school education to:

1. Evaluate the District's policies, practices and procedures for preventing, identifying and remediating harassment and discrimination on the basis of sex;

2. Conduct a school climate assessment, in consultation with the superintendent, and prepare a written analysis of each school in the District regarding administration-to-student and teacher-to-student interactions, to determine whether circumstances warrant school-specific actions;

3. Develop a comprehensive plan to prevent, identify, and remediate harassment and discrimination on the basis of sex (the "Comprehensive Plan"), as described in Section V below; and

4. Develop a mandatory education and training program (the "Training Program"), as described in Section VI below, for all District school board members and employees and for students.

B. Within one hundred and eighty (180) calendar days from the date of selection of the expert pursuant to Section IV.C below, the District shall deliver to counsel for the Government, at the U.S. Attorney's Office, 86 Chambers Street, 3rd Floor, New York, New York 10007 (to the attention of AUSA Heidi A. Wendel), a copy of the written school climate assessment and analysis, the proposed Comprehensive Plan, the proposed Training Program, and

all supporting materials.

C. The expert shall be chosen through the following process: Within sixty (60) calendar days from the date of entry of this Consent Decree, the District shall submit to counsel for the Government the names and resumes of at least two individuals and/or organization(s) with expertise in the area of sexual harassment prevention and training in the context of elementary/secondary school education. The Government shall approve each individual or organization submitted unless it has good cause to challenge their qualifications or to assert that they have a conflict of interest, in which event the Government and the District shall endeavor to agree on another individual or organization. Failing such agreement, the issue of whether the Government had good cause to challenge the qualifications or assert a conflict of interest concerning the individuals or organizations submitted and, if so, what individual or organization shall serve under this Consent Decree shall be submitted to the Court for determination. The District shall be authorized to choose any individual or organization approved by the Government.

D. The District shall pay all the fees and costs of the expert.

V. COMPREHENSIVE PLAN FOR PREVENTING, IDENTIFYING AND REMEDIATING HARASSMENT AND DISCRIMINATION ON THE BASIS OF SEX

The Comprehensive Plan shall be implemented by the District within forty five (45) calendar days from the date of submission of the Comprehensive Plan pursuant to Section IV.B above, and shall, at a minimum, include the following provisions:

A. The District's general statement of policy. The District shall revise its written policy prohibiting harassment and discrimination on the basis of sex, as needed, to ensure

that the written policy (1) sets forth the District's commitment to protect students from harassment and discrimination on the basis of sex and to maintain a nondiscriminatory environment as concerns harassment or discrimination against students on the basis of sex; (2) states that all students, regardless of sex, are entitled to an educational environment free from harassment and discrimination on the basis of sex; (3) reaffirms that the District shall respond to complaints of sexual harassment against students or employees on the basis of sex promptly and appropriately; (4) requires all District employees to promptly report, to the appropriate compliance coordinator, any harassment on the basis of sex that they observe, are informed of, or reasonably suspect; and (5) prohibits retaliation against students or District employees who report allegations of harassment or discrimination on the basis of sex, or who participate in the reporting or investigation of such allegations.

B. Definitions and examples of prohibited conduct. The District shall define harassment and discrimination on the basis of sex and provide concrete examples of sexual harassment. The revised policy shall define harassment and discrimination to include all sexually inappropriate conduct, including purely verbal conduct.

C. Policies and procedures for reporting prohibited conduct.

1. The District shall explain how to report allegations of harassment and discrimination, and with annual revisions (as appropriate), identify to whom at each school such allegations should be reported. The District shall set forth complaint procedures within the District and shall also inform students and their parents of their right to file complaints with the U.S. Department of Education, the U.S. Department of Justice, and other state or local entities.

2. The revised policy shall state that anyone with relevant information

may report allegations of harassment or discrimination, whether that person is a student, District employee, parent or guardian, or any other person who has relevant information. The revised policy shall state that the person reporting the harassment or discrimination need not be a witness to the alleged incident of harassment or discrimination in order to report allegations of harassment or discrimination.

3. The revised policy shall state that any person reporting harassment or discrimination must be treated respectfully and appropriately by the compliance coordinator to whom he or she reports the allegations and any other person within the District's control who is involved in the reporting process.

4. The revised policy shall state that alleged incidents of harassment or discrimination may be reported anonymously and that the District will investigate such alleged incidents to the best of its ability as thoroughly as allegations that are not reported anonymously.

D. Policies and procedures for investigating complaints.

1. The District shall describe the steps it will take to respond to reported incidents of harassment or discrimination, including but not limited to taking disciplinary measures against those found to have engaged in such acts.

2. The revised policy shall state that the District will investigate allegations of discrimination or harassment to the best of its ability regardless of whether the alleged victim of the harassment or discrimination is identified or is willing to speak with the compliance coordinator or with any other person investigating the allegations.

3. The revised policy shall state that the compliance coordinator investigating an alleged incident of harassment or discrimination must interview all identifiable

witnesses of an alleged incident to the extent that the alleged witnesses are willing to be interviewed.

4. The revised policy shall state that in reaching a conclusion regarding whether or not allegations of harassment or discrimination are substantiated, the District will expressly make findings regarding the credibility of the alleged perpetrator, taking into account such factors as whether the alleged perpetrator's statement(s) regarding an alleged prior incident of harassment or discrimination has been contradicted by the statements of the alleged victim or by any witness or witnesses to the alleged prior incident.

E. Policies and procedures for remediating violations.

1. The District shall explain the disciplinary measures available against persons who are found to have engaged in harassment or discrimination on the basis of sex. Corrective action shall be, among other things, calculated to end the harassment or discrimination and prevent retaliation, and designed to ensure that the offending conduct does not limit and/or interrupt the ability of the complainant (and the victim, if different) to participate in, or benefit from, the educational services, programs and/or opportunities provided by the District.

2. The revised policy shall provide that if the District has issued a letter to the perpetrator of an incident of harassment or discrimination directing the perpetrator not to engage in further harassing or discriminatory actions, and the perpetrator disobeys that directive and engages in a further act of harassment or discrimination, the District will take additional steps with respect to disciplining the perpetrator beyond the actions that have already been taken.

F. Policies regarding confidentiality. The District shall explain what efforts

it will make, consistent with its legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations, to respect the privacy of the complainant, the victim, individuals against whom a complaint is filed, and witnesses.

G. Dissemination of policies and procedures, and training of personnel. The District shall inform all employees of the requirements of the Consent Decree and shall post, in prominent places throughout each school and District administrative building, its revised policies concerning harassment and discrimination on the basis of sex.

H. Dissemination of policies and procedures to students and parents. The District shall inform students and their parents, through, at a minimum, annual meetings with all students, an annual distribution of notices to students and mailings to parents or guardians, and inclusion in student and parent handbooks, of the District's policies prohibiting harassment and discrimination on the basis of sex, including how and to whom to report harassment or discrimination, how to file a formal complaint, and what steps the District will take to investigate complaints and discipline those found to have engaged in prohibited conduct.

I. Student curriculum. As part of each school's regular curriculum commencing with the 2006-2007 school year, the compliance officer(s) the District appoints pursuant to Section V.J below shall, at least annually, train students (using age-appropriate training material) about preventing, identifying and responding to harassment and discrimination on the basis of sex.

The training shall, at a minimum, include the following:

1. Informing each student of the District's policies prohibiting any act or practice that has the purpose or effect of discriminating against any student on the basis of that

student's sex in the administration or provision of educational services, programs, opportunities or benefits, including the policies prohibiting retaliation against any student who reports an incident of harassment or discrimination or participates as a witness or otherwise in the investigation of an incident of alleged harassment or discrimination;

2. Informing each student of the District's procedures for the prompt reporting of incidents of harassment or discrimination;

3. Holding a question and answer session to review each of the foregoing areas.

J. Designation of compliance coordinators.

1. The District shall appoint at least two compliance coordinators and shall empower them to receive and investigate complaints of harassment or discrimination, and to take such other actions as may be delineated. There shall be one male and one female compliance coordinator. The District shall ensure that appropriate time is afforded the compliance coordinators to fulfill their duties as described in this Consent Decree.

2. The District shall inform its employees, students and parents or guardians of the identities and roles of the compliance coordinators, and provide their names, business addresses and telephone numbers. The District shall provide the compliance coordinators with appropriate training, which shall be conducted by the expert retained by the District pursuant to Section IV above. Such training shall, at a minimum, include (1) how to investigate allegations of harassment or discrimination on the basis of sex; (2) how to document and maintain records of such investigations; (3) how to balance the complainant's privacy and confidentiality concerns with the notification of complainant's teachers to prevent additional

incidents of harassment or discrimination; and (4) how to remediate such harassment or discrimination.

3. Any new compliance coordinators who may be designated in the future shall receive appropriate training within thirty (30) calendar days.

4. The revised policy shall provide that the complainant, the alleged victim, and the alleged witnesses of an incident of harassment or discrimination shall have the right to request that he or she be interviewed by a compliance officer of the same sex as he or she. The District shall inform the complainant, alleged victim and alleged witnesses of this right prior to interviewing them.

5. The revised policy shall provide that in the event that the alleged perpetrator of an incident of harassment or discrimination is one of the compliance coordinators, that compliance coordinator will not conduct the investigation into the incident.

K. Record-keeping. The District shall maintain a written record ("Incident Report") of each and every allegation, whether verbal or in writing, of harassment or discrimination on the basis of sex. The Incident Report shall, at a minimum, include (1) the name of the person making the allegations (but when the complaint is made anonymously, this name shall be redacted from the report distributed to the board and to any person other than the Title IX compliance officer(s)), and, if different, the name of the alleged victim; (2) the nature of the allegation and the date of the alleged incident; (3) the names of all persons alleged to have committed violations; (4) the names of all persons who may have relevant information about the incident; (5) the written statements of the complainant, the victim (if different from the complainant), the alleged perpetrator, and any witnesses; (6) the outcome of the investigation; (7)

any action taken by the District; and (8) copies of any documents supplied to the District or created during the investigation or complaint process. The Incident Report shall be completed no later than fifteen (15) calendar days after the date upon which the complaint is first made. The compliance coordinators, the school building principal, and the Superintendent shall be supplied with a copy of each such Incident Report, and, in a space specifically designated, each shall initial the Incident Report to indicate that he or she has reviewed the Report and approves of the actions taken by the investigating official. A copy of each Incident Report must be provided to District school board members.

VI. MANDATORY EDUCATION AND TRAINING PROGRAM

A. The District shall begin implementation of the Training Program within forty five (45) calendar days from the commencement of the 2006-2007 school year. The District shall ensure that all District school board members and employees have participated in the Training Program within sixty (60) calendar days of commencement of the program.

B. The Training Program shall, at a minimum, include the following:

1. Informing each individual of the District's policies prohibiting any act or practice that has the purpose or effect of discriminating against any student on the basis of that student's sex in the administration or provision of educational services, programs, opportunities or benefits, including the policies prohibiting retaliation against any individual who reports an incident of harassment or discrimination or participates as a witness or otherwise in the investigation of an incident of alleged harassment or discrimination;

2. Informing each District school board member and employee of his or her duties and responsibilities under the District's Comprehensive Plan for preventing,

identifying and remediating harassment and discrimination on the basis of sex, and of the consequences to each individual for failure to comply with these duties and responsibilities;

3. Informing each individual of the District's procedures for the prompt reporting of incidents of harassment or discrimination;

4. Discussing with District school board members and employees how to structure a classroom and school environment in which harassment and discrimination are not tolerated;

5. Holding a question and answer session to review each of the foregoing areas; and

6. Certification of attendance by the person conducting the Training Program for each person attending the program.

C. The District shall conduct a comparable Training Program within forty five (45) calendar days of the start of each school year.

D. New District school board members and employees shall participate in a comparable Training Program commencing with the 2006-2007 school year, within forty five (45) calendar days after the start of the school year or, in the event that said school board member or employee commences his/her position more than forty five (45) calendar days after the start of the school year, within thirty (30) calendar days of the school board member's or employee's commencement of his/her position.

E. Training conducted pursuant to Subsections A and C of this Section shall be conducted by the expert retained by the District pursuant to Section IV above. All other training of school board members and employees may be conducted by the compliance officers.

VII. REPORTS TO THE GOVERNMENT

A. Six months after the date on which this Consent Decree is entered by the Court, and annually thereafter from the effective date of the Consent Decree, the District shall deliver to counsel for the Government, at the address set forth above, a detailed report covering the preceding period containing information about the District's compliance efforts with this Consent Decree, including but not limited to:

1. Copies of the District's policies and procedures for preventing, identifying, reporting and responding to harassment and discrimination on the basis of sex, including any revisions since the previous report;
2. Copies of notices and other materials provided to employees, students and parents of the District's policies and procedures for preventing, identifying, reporting and responding to harassment and discrimination on the basis of sex, and a description of how and when these notices and materials were distributed;
3. Copies of the agenda (including date of training) and all materials used in the Training Program for District school board members and employees;
4. Copies of all certifications of attendance of District school board members and employees in the Training Program;
5. A list of compliance coordinators, by sex and job title;
6. Copies of the agenda (including date of training) and all materials used in the training of compliance coordinators;
7. The names of all trainers and copies of their resumes, vitae and/or brochures;

8. Copies of all posters or notices regarding harassment and discrimination on the basis of sex, and a description of when they were posted and where;

9. Copies of all Incident Reports, as described in Section V.K, above, with redactions of the names of minor students or a request that the Government maintain the confidentiality of these records to the extent permitted by law; and

10. Narrative descriptions of upcoming training and other activities related to the prevention of harassment and discrimination.

B. Within sixty (60) calendar days of receipt of any of the above reports, the Government may request, in writing, clarifications of, or supplementation to, the report. In that event, the District shall provide such clarifications and/or permit the inspection and copying of supplemental materials as the Government may reasonably request.

VIII. COMPENSATION OF THE PRIVATE PLAINTIFFS

A. This Consent Decree does not constitute, nor shall it be construed as, an admission of liability or wrongdoing by the District.

B. As provided in a separate settlement agreement between the private plaintiffs and the District, the District shall pay a total of one hundred and fifty-two thousand and five hundred dollars (\$152,500) (the "Settlement Amount") to the private plaintiffs and their counsel as follows: The District shall pay thirty-two thousand and five hundred dollars (\$32,500) to Beth Ann Van Tassel; ten thousand dollars (\$10,000) to Laura Dewitt; ten thousand dollars (\$10,000) to Jeannine Surrico; thirty-five hundred dollars (\$3,500) to Cathy Conley; and ninety-six thousand and five hundred dollars (\$96,500) to the private plaintiffs' counsel, Bantle & Levy. These payments shall be made within ten (10) business days from the date of entry of this

Consent Decree, by checks made payable to each of the private plaintiffs and private plaintiffs' counsel.

IX. MISCELLANEOUS PROVISIONS

- A. This Consent Decree constitutes the entire agreement between the Government and the District with respect to the claims asserted in the Government's complaint-in-intervention, and this Consent Decree supersedes all prior understandings, whether oral or written, between the parties. Any amendments or modifications to this Consent Decree must be in writing and signed by the parties.
- B. This Consent Decree shall inure to the benefit of and be binding upon the parties to this Consent Decree.
- C. The Confidentiality Stipulation and Order is amended solely to permit the disclosure of the names of the former student plaintiffs and is unchanged in all other respects.
- D. This Consent Decree may be signed in counterparts, each of which shall be

an original and shall constitute one and the same instrument.

Dated: Feb. 27, 2006

MICHAEL J. GARCIA
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Attorney for the United States

By:



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Dated: , 2006

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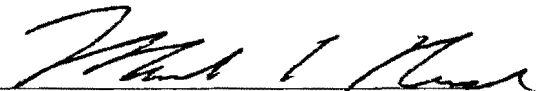
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Dated: February 15, 2006

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By:


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Dated: White Plains, New York

March 22, 2006

SO ORDERED:



UNITED STATES DISTRICT JUDGE