



May 11, 2022

Via Email

Joyce Yearwood-Drury
Director O.S.H.I.
New York State Division of Human Rights
Email: OSHIOfficeFax@dhr.ny.gov

Re: Ronette Hinkson on Behalf of her minor child M.B. v. City of New York, Department of Education, W.H. Maxwell Career and Technical Education High School
Case No. 10216079

Dear Director Yearwood-Drury:

This letter and the attached exhibits comprise the position statement of the New York City Department of Education (“NYCDOE”) in response to the complaint filed with the New York State Division of Human Rights (“SDHR”) by Ronette Hinkson (“Complainant”) on behalf of her minor child M.B. on or about March 22, 2022. A review of the complaint and relevant documents demonstrates that Complainant’s claims of discrimination and retaliation in violation of the New York State Human Rights Law (“NYSHRL”), N.Y. Exec. Law § 296 *et seq.*, are without merit and must be dismissed. Accordingly, the NYCDOE respectfully requests that the SDHR dismiss the complaint or issue a finding of no probable cause.

I. Allegations

Complainant alleges that the NYCDOE “tacitly condoned” discrimination and retaliation against M.B. based on her sex and gender identity or expression by failing to properly address: a bullying report M.B. made in November 2021 (“November 9 Snapchat”) to a teacher and guidance counselor at W.H. Maxwell Career and Technical Education High School (“Maxwell H.S.”); and an off-campus incident in January 2022 (“January 18 incident”) perpetrated by Maxwell H.S. student D.G.’s cousin. See Complaint. Complainant also asserts that the NYCDOE failed to prevent Maxwell H.S. students from retaliating against M.B. at the school after the January 18 incident. See id.

Contrary to Complainant’s unsupported mischaracterizations, Maxwell H.S. is a welcoming and inclusive school environment. Indeed, there is no dispute that school staff supported M.B. and affirmed her female gender identity from her first day as a ninth grade student in fall 2021. The school’s practices are consistent with the Guidelines to Support Transgender and

Gender Expansive Students,¹ the NYCDOE’s comprehensive guidance for promoting inclusion and belonging for transgender students. Moreover, there is no factual or legal basis for Complainant’s claims because, as described in further detail below:

- the NYCDOE was not on notice of any bullying, harassment, or threats against M.B. (The school appropriately supported M.B. to resolve a verbal disagreement between M.B. and her friend D.G. in fall 2021.)
- there is no evidence in the record to support an inference that the January 18 incident was related to M.B.’s protected classes. While the incident was incredibly troubling, it was external to the NYCDOE and thus is being investigated by the New York City Police Department (“NYPD”).
- there is no ongoing safety concern: contrary to Complainant’s incorrect representation, there is no dispute that when the NYCDOE was notified of the January 18 incident, the NYCDOE granted Complainant’s request to transfer M.B. to Business Technology Early College High School (“Business Tech”). M.B. is doing well at Business Tech academically and socially, she is receiving supports, and there have been no incidents there.

The NYCDOE, as always, welcomes Complainant to request any additional supports or resources for M.B. to address Complainant’s concerns and resolve the instant complaint.

II. Statement of Facts

A. Maxwell H.S. is a Supportive and Inclusive Environment

Maxwell H.S. is located at 145 Pennsylvania Avenue in Brooklyn, New York (in District 19), serves grades nine through twelve, and is run by Principal Jocelyn Badette and several Assistant Principals. Channel “Malissa” Reeder has served as the Maxwell H.S. Guidance Counselor since 2012.

Ms. Reeder met M.B. in September 2021 when she began attending Maxwell H.S. Ms. Reeder and other school staff affirmed the female gender identity M.B. asserted at school, and supported M.B.’s involvement in the school community. For example, M.B. used the girls’ restrooms at school, and she participated in activities such as the girls’ step dance team, My Sister’s Keeper, and a wig-making class. Ms. Reeder often welcomed M.B. and other LGBTQ+ students to eat lunch in her office as an additional opportunity to create community.

¹¹ <https://www.schools.nyc.gov/school-life/school-environment/guidelines-on-gender/guidelines-to-support-transgender-and-gender-expansive-students>

B. Fall 2021: No Actual Notice of Bullying, Harassment, or Threats Against M.B.

Contrary to the allegations in the complaint, Ms. Reeder did not receive a report from “Ms. P,” and was not aware of any bullying, harassment, or threats against M.B. In or about early November 2021, M.B. informed Ms. Reeder that she and Maxwell H.S. student D.G., a friend of M.B.’s, had a disagreement. Ms. Reeder asked both students if it would be helpful for her to facilitate a conversation with them together to address M.B.’s concern, and the students agreed. The same day in early November, Ms. Reeder convened M.B. and D.G. in her office for a private conversation. The two students talked with each other amicably, and D.G. apologized to M.B. Based on the information Ms. Reeder was aware of, the one-time disagreement was resolved that day and M.B. did not experience any other issues with Maxwell H.S. students.

Ms. Reeder did not notify Complainant of this resolution because of the nature of M.B.’s concern, which she understood as a one-time disagreement between friends, and not an incident of bullying or harassment.

Presumably, the individual identified in the Complaint as “Ms. P” is a substitute paraprofessional who assisted the Maxwell H.S. step dance team in fall 2021 and is no longer assigned to that school. She does not recall receiving any reports from M.B. about disagreements with other students or bullying or harassment of any kind, nor does the NYCDOE have a record of any such communications.

C. January 2022: NYCDOE Appropriately Responded to External Incident

From the end of winter recess, January 3, through January 17, 2022, Complainant kept M.B. home from school. Complainant represented to school staff that the two weeks of absences were due to pending COVID-19 test results. M.B. otherwise had positive participation in school. M.B. returned to Maxwell H.S. on Tuesday, January 18, 2022.

That afternoon after school dismissal, an unidentified individual—who does not attend Maxwell H.S.—physically assaulted M.B. off school premises. Because the January 18 incident was external and did not occur during a NYCDOE program or activity, school staff did not learn of the incident until on or about January 20, 2022 when Complainant contacted Ms. Reeder and provided her NYPD report number. The NYPD recently confirmed to the NYCDOE that the accused individual was arrested and the NYPD’s investigation is pending. The NYPD will not share the individual’s identity with the NYCDOE.

Principal Badette and Ms. Reeder reviewed the disturbing video footage of the January 18 incident, and took prompt steps to ensure M.B. was safe and supported. On January 19, M.B. informed the school that D.G. and another Maxwell H.S. student had information about the incident. On January 24, the school obtained the following statement from D.G.:

- “[M.B.] and I were having a conversation and I called her out her pro-nouns by accident. I apologized to [M.B.] she said it was ok but after that [M.B.] was talking under her breath about the conversation.”
- “[M.B.] was in the groupchat and said ‘[D.G.] if this is you im going to press you’ then [M.B.] left the groupchat.”
- “After [M.B.] left the groupchat she started to post on snapchat about the groupchat.”
- “The next day [M.B.] told Ms. Reeder about the conversation and the groupchat we talked about it and the situation was over.”
- “A while after someone had told me [M.B.] was on social media talking about it again but I wasnt able to see it because I didnt have my phone.”
- “A person from the groupchat came to the school one day but didnt know [M.B.] was there. [They] asked [M.B.] why she was saying those things in the groupchat. They were having a conversation that led to an arguement then they started fighting.”
- “The person from the groupchat didnt want to fight [M.B.] but wanted to ask [M.B.] why she was saying those.”

Consistent with Ms. Reeder’s recollection, D.G.’s statement reflects that she did not bully or harass M.B., nor instigate or invite the accused individual to the school. D.G.’s parent also informed Principal Badette that she is D.G.’s only relative in the United States, she does not know the identity of the accused individual, and he is not D.G.’s cousin. The other Maxwell H.S. student M.B. identified told Ms. Reeder that she was not involved in the incident, and she did not share the identity of the accused individual.

In sum, the individual accused of assaulting M.B. remains unidentified and is not a Maxwell H.S. student. Moreover, based on D.G.’s statement, the only contemporaneous motivation articulated for the assault is not M.B.’s sex or gender identity or expression—but rather in response to a threat M.B. made to D.G. in an earlier “groupchat” exchange. In any event, the NYCDOE properly referred Complainant’s allegations to the Office of Equal Opportunity & Diversity Management and Office of Special Investigations, the appropriate NYCDOE offices for investigation.

As noted above, Complainant requested a safety transfer for M.B., and Ms. Reeder and the Office of Student Enrollment supported Complainant through the process to expedite her request, which was promptly granted. On February 3, 2022, M.B. began attending Business Tech (see Exhibits A and B)—a school closer to M.B.’s home and which Complainant requested.

M.B. is doing well at Business Tech. Her grades and attendance are positive, see Exhibits A and C, she is thriving socially, and she continues to receive socioemotional supports. School staff met with M.B. and discussed available resources and how they can support her. There have been no issues or incidents since her enrollment there.

III. Legal Analysis

A. No Discrimination

The NYSHRL provides that “[i]t shall be an unlawful discriminatory practice for an educational institution to . . . permit the harassment of any student . . . by reasons of [her]” “sex” or “gender identity or expression.” See N.Y. Exec. Law § 296(4). As explained below, Complainant fails to make out a prima facie claim that the NYCDOE discriminated against M.B. based on her sex or gender identity or expression or any other protected class. Complainant has no evidence to show that NYCDOE had actual knowledge of student-to-student sex-based harassment in fall 2021, and when NYCDOE learned of the off-premises January 2022 incident it promptly took appropriate action.

i. Fall 2021: NYCDOE Responded Appropriately and without Deliberate Indifference

For an educational institution to be liable for student-to-student sex-based harassment, Complainant must demonstrate: (1) “a school official with authority to address” the alleged harassment and to “institute corrective measures,” (2) had “actual knowledge” of the harassment, and (3) responded with “deliberate indifference.” See Campisi v. City Univ. of N.Y., 2016 WL 4203549, at *5 (S.D.N.Y. Aug. 9, 2016) (quoting Papelino v. Albany Coll. of Pharm. of Union Univ., 633 F.3d 81, 89 (2d Cir. 2011) (internal quotation marks omitted)); see, e.g., Weinstock v. Columbia Univ., 224 F.3d 33, 42 n. 1 (2d Cir. 2000) (finding analogous NYSHRL and Title IX claims are subject to the same standard) (superseded by statute on other grounds for employment claims).

First, even if Ms. Reeder, a guidance counselor, had the authority to institute corrective measures, there is no evidence that she had actual knowledge of harassment against M.B. See Tyrrell v. Seaford Union Free Sch. Dist., 792 F. Supp. 2d 601, 624 (E.D.N.Y. 2011) (dismissing Title IX claims where school staff did not have actual notice of allegedly harassing photographs being posted on district computers). Rather, in or about November 2021, M.B. informed Ms. Reeder that she had a one-time disagreement with D.G. Ms. Reeder did not have actual knowledge of any incidents that could be construed as harassment.

Second, even if the one-time disagreement could be construed as harassment cognizable under the NYSHRL—which it cannot—Complainant has offered no information to show that the NYCDOE responded to M.B.’s November 2021 disclosure with deliberate indifference. In order to be found deliberately indifferent, a school district’s “response to the harassment or lack thereof” must be “clearly unreasonable in the light of known circumstances.” See Soriano ex rel. Garcia v. Bd. of Educ. of City of New York, 2004 WL 2397610, at *4 (E.D.N.Y. Oct. 27, 2004) (dismissing Title IX claim as a matter of law) (citing Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 648 (1999)). In making this determination, “courts should refrain from second-guessing the disciplinary decisions made by school administrators.” Soriano, 2004 WL 2397610, at *4 (internal citation omitted). School staff are not required to “purg[e] their schools of actionable peer

harassment,” take “particular disciplinary action,” nor “make particular remedial demands.” Nungesser v. Columbia Univ., 244 F. Supp. 3d 345, 371 (S.D.N.Y. 2017) (dismissing sex-based Title IX and NYSHRL harassment claims that included alleged social media threats) (internal citation and quotation marks omitted).

Far from displaying deliberate indifference, Ms. Reeder promptly addressed M.B.’s concern the same day as M.B.’s disclosure, which did not include information about harassment, and the disagreement was resolved that day when D.G. apologized.

Third, Complainant fails to allege, much less prove, that the harassment was “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to” NYCDOE’s “educational opportunities or benefits.” See Feibleman v. Trustees of Columbia Univ. in City of New York, 2020 WL 3871075, at *5 (S.D.N.Y. July 9, 2020) (dismissing Title IX claim) (citing Davis, 526 U.S. at 650). To meet this requirement, the harassment must have been “serious enough to have [had] a systemic effect of denying the victim equal access to an educational program or activity” and “more than episodic; it must [have been] sufficiently continuous and concerted.” Carabello v. New York City Dep’t of Educ., 928 F. Supp. 2d 627, 642-43 (E.D.N.Y. 2013) (dismissing Title IX claim where “single incident of sexual abuse” did not meet this standard) (internal citation and quotation marks omitted).

M.B.’s November 2021 concern was an isolated occurrence, quickly resolved in a supportive environment, and M.B. has never been denied access to NYCDOE programs or activities.

ii. January 2022: NYCDOE Responded Appropriately to External Incident without Deliberate Indifference, and M.B. is Supported at Business Tech

Relatedly, the NYCDOE has found no evidence indicating the January 18 incident occurred because of M.B.’s sex or gender identity or expression—nor is there any support for Complainant’s allegation that the NYCDOE should have somehow predicted the January 18 incident, which occurred after M.B. had not been in school for two weeks following winter break. As explained above, actual (and not constructive) notice is the legal standard. See Carabello, 928 F. Supp. 2d at 639 (finding the school district did not have actual notice of second incident which was “not sufficiently similar” to a prior concern).

As a general matter, school districts are not responsible for misconduct when they do not have “substantial control” over “both the harasser and the context in which the known harassment occurs.” See Nungesser, 244 F. Supp. 3d at 368 (quoting Davis, 526 U.S. at 645). There is an inference the district does not control conduct such as the January 18 incident that occurred outside school hours and off school grounds. See Tyrrell, 792 F. Supp. 2d at 626.

In any event, this was also an isolated incident and Complainant was not denied access to NYCDOE education programs or activities. Maxwell H.S. and the NYCDOE promptly responded and granted Complainant's request to transfer M.B. to Business Tech, a school closer to her home.

Finally, Complainant misrepresents that as of the date of the complaint in March 2022, M.B. was "forced to continue" attending Maxwell H.S. and students there treated M.B. in an "unpleasant" manner because of her sex and gender identity or expression (and "in retaliation," addressed below). The record clearly shows that M.B.'s last day present at Maxwell H.S. was January 19, 2022 and she began attending Business Tech shortly thereafter on February 3. M.B. is doing well at her new school and adjusted there without incident.

In sum, Complainant fails to prove a prima facie claim that the NYCDOE discriminated against M.B. based on her sex or gender identity or expression.

B. No Retaliation

Complainant's retaliation claim, to the extent it can be discerned, must be dismissed for failure to establish a prima facie case. The NYSHRL provides that "[i]t shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because . . . she has opposed any practices forbidden under this article or because . . . she has filed a complaint" See N.Y. Exec. Law § 296(7).

Complainant must show: "(1) protected activity by [Complainant]; (2) knowledge by the [Respondent] of the protected activity; (3) adverse school-related action; and (4) a causal connection between the protected activity and the adverse action." See Carabello, 928 F. Supp. 2d at 644; see also Bailey v. New York L. Sch., 2021 WL 5500078, at *2 (2d Cir. Nov. 24, 2021) (applying the Title IX standard to NYSHRL retaliation claim, and affirming the dismissal of all claims) (summary order), cert. denied sub nom. Bailey v. NY L. Sch., 2022 WL 1131463 (U.S. Apr. 18, 2022).

As explained above, Complainant's assertions about students' retaliatory conduct after the January 18 incident are baseless because M.B. was promptly granted a transfer to a different school of her choice. Thus, there is no evidence of adverse action by the NYCDOE against Complainant or M.B., nor has Complainant identified a legally cognizable protected activity, NYCDOE's knowledge of such protected activity, or a causal connection between the protected activity and the adverse action.

IV. Conclusion

The NYCDOE did not discriminate or retaliate against M.B. Accordingly, the NYCDOE respectfully requests that the SDHR dismiss the complaint or issue a finding of no probable cause.

Director Yearwood-Drury

May 11, 2022

Page | 8

Exhibit List

Exhibit A 2021-2022 Attendance

Exhibit B Enrollment History

Exhibit C Spring 2022 (Term 2) Report Card

EXHIBIT A

PROFILE: ██████████
 USER: ██████████

ATS NEW YORK CITY PUBLIC SCHOOLS
 INDIVIDUAL STUDENT ATTENDANCE REPORT (RISA)
 YEAR-TO-DATE FOR SCHOOL YEAR 2021-2022

STUDENT NAME : ██████████ PARENT/GUARDIAN: ██████████ SCHOOL : ██████████
 STUDENT ID : ██████████ ADDRESS : ██████████ GRADE LV: ██████████
 GDR : ██████████ CITY/STATE/ZIP : ██████████ CLASS : ██████████
 DATE OF BIRTH: ██████████ HOME PHONE : ██████████ BUSINESS PHONE : ██████████
 IMMUN STATUS : ██████████ ROOM : ██████████

	M					T					W					H					F					SCHL DAYS	ENRO DAYS	PRES	ABSE	HALF		PCT				
SEPTEMBER																										13	13	13	0	0	0	100				
OCTOBER					01	04	05	06	07	08						12	13	14	15	18	19	20	21	22	25	26	27	28	29	20	20	20	0	0	0	100
NOVEMBER		01	02	03	04	05	08	09	10	12	15	16	17	18	19	22	23	24			29	30				19	19	19	0	0	1	100				
DECEMBER			01	02	03	06	07	08	09	10	13	14	15	16	17	20	21	22	23							17	17	17	0	0	2	100				
JANUARY		03	04	05	06	07	10	11	12	13	14		18	19	20	21	24	25	26	27	28					19	19	2	17	0	1	11				
															1ST TERM TOTALS					88	71	17	0	4	81											
FEBRUARY			02	03	04	07	08	09	10	11	14	15	16	17	18						28					14	14	12	2	0	5	86				
MARCH		01	02	03	04	07	08	09	10	11	14	15	16	17	18	21	22	23	24	25	28	29	30	31		23	23	20	3	0	11	87				
APRIL				01	04	05	06	07	08	11	12	13	14							25	26	27	28	29	15	15	12	3	0	6	80					
MAY		03	04	05	06	09	10	11	12	13	16	17	18	19	20	23	24	25	26	27		31				20	20	3	2	0	1	60				
JUNE			01	02	03	06	07	08		10	13	14	15	16	17		21	22	23	24	27					17	0	0	0	0	0	0				
NO-DATE = NO-SCHOOL	L = LATE	A = ABSENT-UNEXCUSED	* = SCAN-INCOMPLETE																2ND TERM TOTALS					72	47	10	0	23	82							
BLANK = PRESENT	R = RELEASED	E = ABSENT-EXCUSED	- = NOT-ENROLLED																TOTALS FOR YEAR					160	118	27	0	27	81							
															TOTALS FOR 20-21					176	176	0	0	0	100											

DBN	STATUS	ADMISSION CODE	ADMISSION DATE	DISCHARGE CODE	DISCHARGE DATE	FROM SCHOOL	TO SCHOOL	INTERCLASS TRANSFERS
26Q315	ACTIVE	50	02/03/22			K-19-660		(000) 02/03/22, (1B1) 02/03/22
19K660	DISCHARGED	57	07/02/21	00	02/03/22	K-84-379	Q-26-315	(000) 07/02/21, (1B1) 02/03/22 E

EXHIBIT B



Enrollment History

Business Technology Early College High
School (26Q315)

Active

Enrollment Date: 02/03/2022 - Current

Admit Code: 50 - ADM FROM ANOTHER NYC PUBLIC SCHOOL

W. H. Maxwell Career and Technical
Education High (19K660)

Discharged

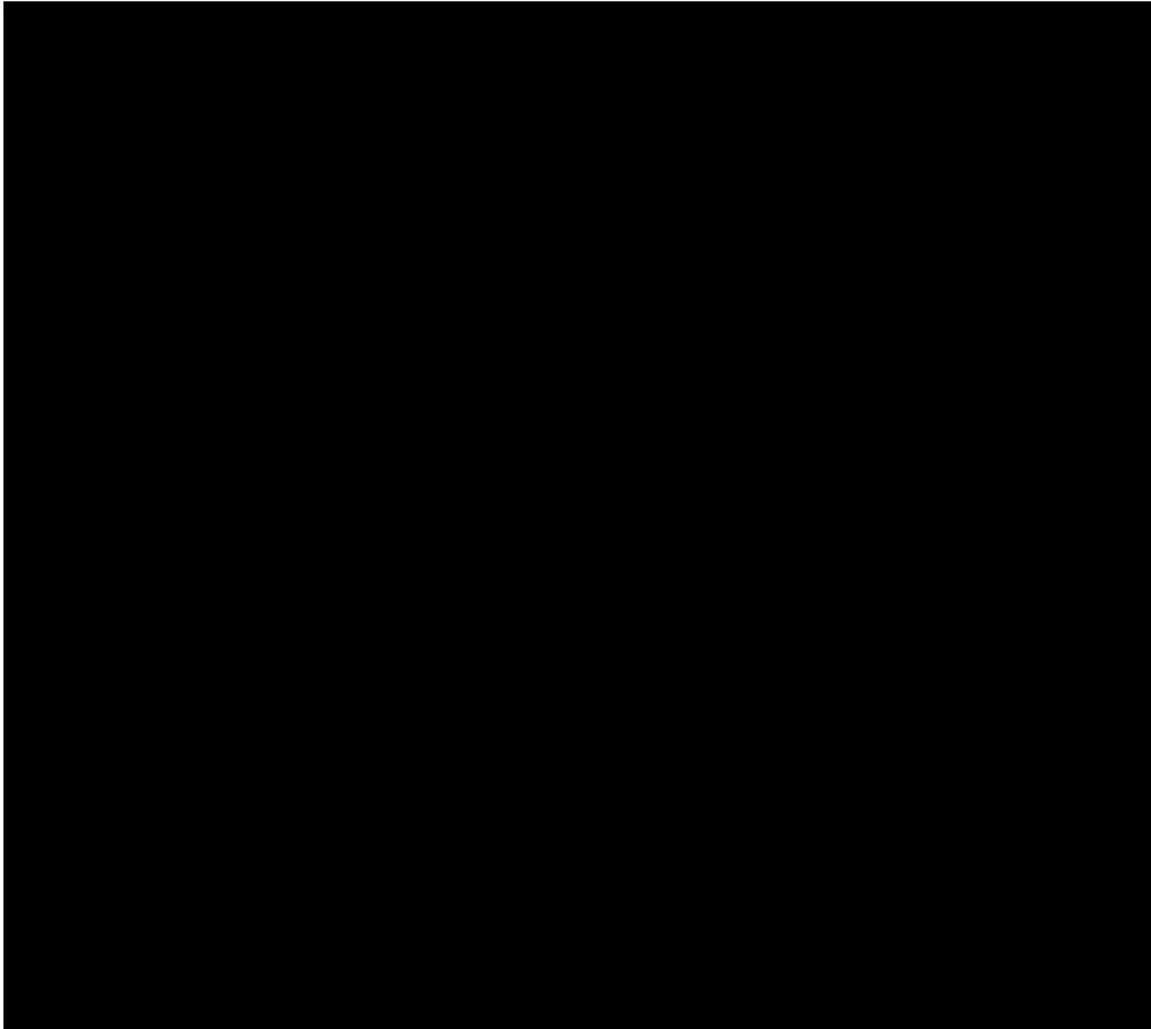


EXHIBIT C

School Year 2021 - 22, Term 2

Marking Period 1 (2/2 - 3/7)			
Subject	Grades	Credits Earned	Credits Attempted
Core English - EES82-1 Philip Lin, Althea Porter, Vanessa Turcios	95	1.00	1.00
Excellent progress made in this subject.			
Global History - HGS42-5 Monique James, Felice Stipanov	89	1.00	1.00
Consistently makes an effort to help others. Works well collaboratively.			
Integrated Algebra - MES22-2 Daniel De sousa, Monique James	75	1.00	1.00
Consistently participates in class. Works well collaboratively.			
Other Math - MQS22S-3 Alice Browne	P	0.00	0.00
Health Education - PHS22QF-4 Rousio Malaxianis	90	0.50	0.50
Works well independently. Shows initiative.			
Physical Education Survey - PPS82-4 Rousio Malaxianis	94	0.50	0.50
Excellent progress made in this subject. Consistently participates in class.			
Living Environment - SLS22-1 Michael Acquaoatta, Alisa Bujosa	75	1.00	1.00
Meets standards in understanding concepts of reproduction and development. Meets standards in obtaining, evaluating, and communicating scientific information.			
Living Environment - SLS22QL-1	P	0.00	0.00
Other Science - SQS22S-3 Alice Browne	P	0.00	0.00
Computer Technology - TYS22-4 David Rivera	86	1.00	1.00

Subject	Grades	Credits Earned	Credits Attempted
Core English - EES82-1 Philip Lin, Althea Porter, Vanessa Turcios	93	1.00	1.00
Excellent progress made in this subject.			
Global History - HGS42-5 Monique James, Felice Stipanov	84	1.00	1.00
Integrated Algebra - MES22-2 Daniel De sousa, Monique James	65	1.00	1.00
Is consistently prepared for class. Works well collaboratively.			
Other Math - MQS22S-3 Alice Browne	P	0.00	0.00
Health Education - PHS22QF-4 Rousio Malaxianis	72	0.50	0.50
Frequently does not submit class work. Low scores on assessments.			
Physical Education Survey - PPS82-4 Rousio Malaxianis	92	0.50	0.50
Consistently participates in class. Excellent progress made in this subject.			
Living Environment - SLS22-1 Michael Acquattro, Alisa Bujosa	55	0.00	1.00
Frequently does not submit class work. Inconsistent quality of work. Requires additional academic assistance.			
Living Environment - SLS22QL-1	F	0.00	0.00
Other Science - SQS22S-3 Alice Browne	P	0.00	0.00
Computer Technology - TYS22-4 David Rivera	65	1.00	1.00
Meets standards in using technology, including the internet, to produce and publish writing. Does not persist in completing assigned tasks.			