



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

December 20, 2013

Dr. Matthew Goldstein
Chancellor
The City University of New York
Office of the Chancellor
535 East 80th Street
New York, New York 10075

Re: Case No. 02-13-2341
City University of New York – Borough of Manhattan Community college

Dear Chancellor Goldstein:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the City University of New York, Borough of Manhattan Community College (BMCC). The complainant alleged that BMCC failed to respond appropriately to his complaint of sexual harassment, which he filed with BMCC in February 2013.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). BMCC is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The complainant alleged that BMCC failed to respond appropriately to his complaint of sexual harassment, which he filed with BMCC in February 2013. Title IX and its implementing regulation prohibit discrimination based on sex, including sexual harassment. Sexual harassment is unwelcome conduct of a sexual

nature and can include sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct. Hostile environment sexual harassment is sexually harassing conduct that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or receive benefits, services, or opportunities in the recipient's program. If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires the recipient to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination.

In its investigation, OCR reviewed information and documentation that the complainant and BMCC submitted. OCR also interviewed the complainant and BMCC personnel. OCR made the following determinations.

OCR reviewed the College's sexual harassment policies and procedures to determine whether these comply with the requirements of Title IX. Specifically, OCR reviewed whether the College had: (a) designated a Title IX Coordinator, and provided notification of the name, office address, and telephone number of the Title IX coordinator; (b) provided notice that it does not discriminate on the basis of sex; and, (c) adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination on the basis of sex.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (the Title IX Coordinator), and to notify all students and employees of the name or title, office address, and telephone number of the designated coordinator. In addition, OCR's "Dear Colleague" Letter dated April 4, 2011, states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator.

OCR determined that BMCC has designated at least one person, the Chief Diversity Officer, to coordinate its efforts to comply with and carry out its responsibilities under the requirements of Title IX. OCR further determined that BMCC notifies

students and employees of the Title IX Coordinators name, title, office address, and telephone number.

OCR determined that the following publications contain BMCC's designation and notice of its Title IX Coordinator:

- BMCC Student Handbook
- BMCC 2011-2014 Bulletin
- BMCC College Assistant Handbook
- BMCC Human Resources Equal Opportunity/Affirmative Action Policy

However, OCR determined that none of the above-referenced documents include an email address for the Title IX Coordinator.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form which it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

OCR determined that the following publications contain BMCC'S nondiscrimination notice:

- BMCC Student Handbook
- BMCC 2011-2014 Bulletin
- BMCC College Assistant Handbook
- BMCC Human Resources Equal Opportunity/Affirmative Action Policy
- BMCC Employment Application

OCR determined that BMCC's nondiscrimination statements in the BMCC Student Handbook, BMCC 2011-2014 Bulletin, and the BMCC College Assistant Handbook state that BMCC does not discriminate on the basis of gender in the education programs or activities it operates, and that the prohibition against discrimination extends to employment.

OCR determined that the notices of nondiscrimination indicated that inquiries could be referred to BMCC's Title IX Coordinator; however, the notices did not state that inquiries concerning Title IX could also be referred to OCR.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student, employee, and third party complaints that allege any action which would be prohibited by the regulation. OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of procedures, including where complaints may be filed; (b) application of the procedures to discrimination by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome; and (f) assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.

OCR determined that BMCC uses the CUNY system's grievance procedures for employee, student and third party complaints of discrimination and/or harassment under Title IX. OCR is currently investigating CUNY's grievance procedures as part of another pending complaint (OCR Case No. 02-13-2052). Therefore, OCR will not analyze CUNY's Title IX grievance procedures in the course of the instant investigation, as any compliance concerns will be addressed in the course of the investigation of OCR Case No. 02-13-2052.

With respect to the allegation, the complainant alleged that the professor for his final nursing course XXXXXX (the course) subjected him to sexual harassment from September to December 2012, by inappropriately touching him; massaging his shoulders and rubbing his neck; making "suggestive gestures and innuendos"; pressuring him to meet with her before and after class; discussing her personal life with him during those meetings; and issuing him a failing grade of C- for the course. The complainant alleged that the Chief Diversity Officer (the Coordinator), who investigated his internal complaint, failed to interview all identified witnesses and took too long to complete her investigation.

OCR determined that on or about February 11, 2013, the complainant filed a formal written complaint with the Coordinator, in which he alleged that the professor subjected him to sexual harassment by engaging in the conduct detailed above. OCR determined that the Coordinator conducted an investigation of the complainant's allegation by interviewing the complainant, the professor, the chair of the nursing department, and six students in the course.

The professor asserted to the Coordinator that the complainant's allegation was the result of his poor academic performance and a desire to change his grade. She cited an email she received from the complainant on February 3, 2013, in which he indicated his willingness to withdraw his complaint against the professor if the professor would adjust his grade from a C- to a passing grade. The professor denied massaging or rubbing the complainant; and asserted that if she ever touched a student, it was to get a student's attention. The professor also denied making "suggestive gestures and innuendos", pressuring the complainant to meet with her before and after class, and discussing her personal life with the complainant during meetings.

None of the six students the Coordinator interviewed corroborated the complainant's assertions that the professor touched him inappropriately. None of the students witnessed any inappropriate remarks, touching, or sexual behavior; though some students witnessed the professor touch or pat students on the shoulder or hand in a friendly manner. The complainant did not provide and BMCC did not find any evidence or witnesses to support the complainant's assertion that the professor pressured the complainant to meet with her before and after class, or discussed her personal life with him during those meetings. The Coordinator informed OCR that she discussed the justification for the complainant's grade with the professor and the department chair, and determined that a C- was an appropriate grade.

Based on her investigation, the Coordinator concluded that the evidence did not support the complainant's claim that the professor had touched him inappropriately or made suggestive or otherwise inappropriate comments. She further concluded that the evidence was insufficient to support the complainant's allegation that the professor pressured him to meet with her or that her invitation to meet was sexually motivated. Lastly, the Coordinator concluded that the complainant's failing grade corresponded with his poor academic performance in the course.

The President of BMCC reviewed the Coordinator's findings and agreed that the complainant's allegations were not substantiated. On May 7, 2013, the Coordinator notified the complainant that she had concluded her investigation of his complaint, and that the evidence did not support his allegation of sexual harassment. She also advised the complainant that his failing grade in the course was warranted based on his performance in the course and would not be changed.

Based on the foregoing, OCR determined that BMCC promptly and equitably investigated the complainant's complaint that the professor subjected him to sexual harassment. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that BMCC failed to respond appropriately to his internal complaint alleging sexual harassment, filed in

February 2013. Accordingly, OCR will take no further action with respect to the allegation.

On December 18, 2013, BMCC voluntarily entered into the attached resolution agreement in order to resolve the above-referenced compliance concern regarding its notices of non-discrimination, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor implementation of the resolution agreement. If BMCC fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter should not be interpreted to address BMCC's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that BMCC may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Richard Anderson, Compliance Team Investigator, at (646) 428-3781 or richard.anderson@ed.gov; or Ryan Milligan, Compliance Team Attorney, at (617) 289-0189 or ryan.milligan@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.