



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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NEW JERSEY
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October 26, 2015

James B. Milliken
Chancellor
The City University of New York
205 East 42nd Street
New York, New York 10017

Re: Case No. 02-15-2321
CUNY York College

Dear Chancellor Milliken:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the City University of New York, York College. The complainant alleged that the College failed to respond appropriately to the complaints of sexual harassment she made against a professor (the Professor) in xxxx 2014.

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). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

In its investigation, OCR reviewed documentation that the College submitted. OCR also interviewed the complainant and College staff. OCR made the following determinations.

During academic year 2013-2014, the complainant was enrolled as a xxxxx xxxxxxx major at the College. During the xxxx 2013 semester, the complainant was enrolled in the xxxxxxxx xxxxxx xxxxxxxxxxx xxxxxxxxxxx course (the Course), taught by the Professor. The complainant alleged that the College failed to respond appropriately to the complaints of sexual harassment she made against the Professor in xxxx 2014. The complainant also alleged that she was not kept apprised of the investigation and never received a final report from the College. Further, the complainant alleged that the College refused to tell her who would review and grade a paper about which she had complained.

limited information regarding the alleged conduct at issue.⁶ The Dean informed OCR that she was never advised that she had to issue a written warning to the Professor, and was unaware that the xxxxxxxxxxxxxxxx had recommended that action. The Dean stated that she has issued such written warnings in the past; and in each instance, she was expected to draft the written warning in advance for approval by other departments before issuing the same. The Dean stated that had she been requested to issue a written warning, she would have following the same procedure that she had in the past.

OCR determined that on xxxxxxxxxx 2015, the xxxxxxxxxxxxxxxx sent a report of her investigation to the College President; both the College's 2012 Policy and 2015 Policy require this.⁷ The report stated the xxxxxxxxxxxxxxxx conclusion that the Professor's emails to the complainant and Student A appeared to be inappropriate, as well as the xxxxxxxxxxxxxxxx recommendation that the Professor be given a warning letter, and attend a training session. The xxxxxxxxxxxxxxxx also stated that she had recommended that the complainant's papers be reviewed, and noted that the papers had already been reviewed and found to have been graded appropriately.

Although the College's procedures state that the College President will review the complaint investigation report and authorize any action deemed necessary, OCR did not find, nor did the College provide, any evidence that the President took any action on the xxxxxxxxxxxxxxxx report. The xxxxxxxxxxxxxxxx acknowledged that she may not have followed the College's procedures in the correct order, as she was new to her position and there was a lot of transition taking place. The xxxxxxxxxxxxxxxx advised OCR that in or around June 2015, she requested the written documentation from the Dean regarding the written warning to the Professor, and learned that he had not received one. OCR determined that the College did not take any further action to issue a written warning after learning that one had not been issued, nor did the College reissue written notices of outcome to the complaining students advising them of the changed corrective action taken. Additionally, OCR determined that as of October 2015, the Professor had still not taken the training recommended by the xxxxxxxxxxxxxxxx.

Based on the above, OCR determined that the College failed to conduct a prompt and equitable investigation of the complainant's and Student A's complaints of sexual harassment.⁸ Specifically, OCR found that the College did not conduct the investigation promptly, as the complainant filed her complaint on xxxxxx 2014, but the College did not issue a written notice to the complainant regarding her complaint until xxxxxxxxxx 2015. Further, the xxxxxxxxxxxxxxxx issued written notice on xxxxxxxxxx 2015, stating that it was the final determination regarding the complaint, even though, pursuant to College policy, the corrective actions detailed were only recommended, and had not been finalized. Additionally, in xxxx 2015, the xxxxxxxxxxxxxxxx

⁶ At that time, the Dean was aware that a student had alleged that the Professor had called her "darling". OCR determined that this allegation was made by Student A, not the complainant.

⁷ The 2012 Policy states, "Promptly following the completion of the investigation, the Chief Diversity Officer will report his or her findings to the President . . . Following such a report, the President will review the complaint investigation report and, when warranted by the facts, authorize such action as he or she deems necessary to properly correct the effects of or to prevent further harm to the affected party or others similarly situated." The 2015 Policy states in relevant part, "Following the completion of the investigation, the Title IX Coordinator shall report her/his findings to the College President in writing. Following such report, the College President shall review the complaint investigation report and authorize such action as she/he deems necessary to address the issues raised by the findings."

⁸ As discussed above, the College investigated the complaints jointly.

learned that the Professor had not received the sanction she recommended; however, the xxxxxxxx
xxxxxxxxxxxxx took no action to impose the correct sanction, nor did she notify the complainant of
the changed outcome of the complaint. Finally, while the College asserted that personnel changes
and policy changes affected how the investigation was completed, OCR determined that the
College did not comply with either the 2012 Policy or the 2015 Policy in conducting the
investigation. Moreover, the corrective actions the College identified as appropriate to address the
complainant's complaint, namely issuing a warning to the Professor and requiring him to receive
training regarding Title IX, have yet to be implemented, more than a year after the complaint was
filed.

On October 22, 2015, the College agreed to implement the enclosed resolution agreement, which
addresses the compliance concerns identified with regard to this complaint. OCR will monitor the
implementation of the resolution agreement. If the College fails to comply with the terms of the
resolution agreement, OCR will resume its investigation.

This letter should not be interpreted to address the College's compliance concerns 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 have the right to file a private suit in federal court whether or not OCR finds a
violation.

Please be advised that the College 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 should occur, the complainant may file a separate complaint alleging such
harassment or intimidation.

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 Jocelyn M. Panicali,
Compliance Team Attorney at (646) 428-3796 or jocelyn.panicali@ed.gov; or Nadja Allen Gill,
Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: xxxxxxxxxxxxxxxxxxxx