

April 29, 2016

Heidi R. Macpherson, PhD  
President  
State University of New York  
The College at Brockport  
350 New Campus Drive  
Brockport, New York 14420

Re: Case No. 02-16-2004  
State University of New York (SUNY) College at Brockport

Dear President Macpherson:

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 SUNY College at Brockport (the College). The complainant alleged that the College failed to respond appropriately to her complaints, made on or about October 29, 2014, that College staff subjected her to harassment because of her race, age and sex (Allegation 1). The complainant also alleged that the College retaliated against her for filing the above-referenced complaints by placing her in “bad academic standing” on or about January 19, 2015 (Allegation 2).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also 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 Department. In addition, OCR is responsible for enforcing the Age Discrimination Act of 1975 (the Age Discrimination Act), 42 U.S.C. § 6101 *et seq.*, and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age in programs and activities receiving financial assistance from the Department. The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI, Title IX, and the Age Discrimination Act.

The regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI, which provides that no recipient or

other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.34, provides that a recipient may not engage in acts of intimidation or retaliation against any person who attempts to assert a right protected by the Age Discrimination Act, or who cooperates in any mediation, investigation, hearing, or other part of the Department's investigation, conciliation and enforcement process.

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

With respect to Allegation 1, the complainant alleged that the College failed to respond appropriately to her complaints, made on or about October 29, 2014, that College staff subjected her to harassment because of her age, race, and sex. The complainant asserted that she submitted formal complaints regarding these issues, but the College failed to follow the procedures that it had in place in investigating the complaints. She stated that, contrary to the College's procedures, she never had an opportunity to provide witnesses or to have her case heard before a tripartite panel. She further stated that she never received notification of an outcome for her race and age complaint, and that the notification she received regarding her sexual harassment complaint did not address the concerns she had raised with the College.

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient. Similarly, the regulation implementing Title VI, at 34 C.F.R. § 100.3(a), provides that no person shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program operated by a recipient. In addition, the regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.10(a), provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity operated by a recipient.

Harassment on the basis of sex, race or age is a form of discrimination prohibited by Title IX, Title VI, the Age Discrimination Act, and their implementing regulations, respectively. Harassing conduct can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party, as well as conduct that is physically threatening, harmful, or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. If OCR determines that harassing conduct occurred, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

The College provided to OCR its Discrimination Complaint Procedure which was effective at the time the complainant filed her complaints with the College and until the College reached a determination about her complaints.<sup>1</sup> The Discrimination Complaint Procedure was available to any College student or employee who wished to file a complaint of unlawful discrimination on the bases of race, color, national origin, religion, age, sex, sexual orientation, disability, veteran status, or marital status. It contained processes for both Informal and Formal Resolution.

For either Informal or Formal Resolution, the Discrimination Complaint Procedure required that students file their complaints with the Affirmative Action Officer (AAO) within 90 calendar days of the alleged discrimination or within 90 calendar days after a final grade was received, whichever was later.<sup>2</sup> It required that complainants file their complaints using the complaint form attached to the back of the Discrimination Complaint Procedure. The complaint form requested certain information, including the complainant's contact information; a statement of facts about the alleged discrimination; and the respondent's name and contact information.

If a complainant sought an Informal Resolution, the Discrimination Complaint Procedure required that the AAO attempt to review all relevant information, interview all relevant witnesses, and "if desirable," bring the parties together. If the parties reached a resolution within 24 calendar days from the date the complaint was filed, the AAO could close the case by sending written notice to each party, containing the terms of the resolution and each party's signature. If the parties did not reach a resolution within 24 calendar days from the date the complaint was filed, the AAO was required to notify the complainant and inform the complainant of his/her right to proceed with a formal complaint or to file a separate complaint with an external agency.

Under the Discrimination Complaint Procedure, a complainant could seek a Formal Resolution either after an unsuccessful attempt at Informal Resolution, or without first trying for an Informal Resolution. Within ten calendar days of receiving the complaint, the AAO was required to forward it to the Chairperson of the Campus Affirmative Action Committee, as well as to notify the parties and College President that a tripartite panel would review the complaint. The parties would jointly select the members of the tripartite panel. The AAO was also required to send a copy of the written complaint to the respondent. The tripartite panel was to review all relevant information, interview relevant witnesses, and at its discretion, hear testimony from the parties. The parties had the right to submit written statements or other evidence, and to provide rebuttal to the tripartite panel's written record. Within 48 calendar days of the formation of the tripartite panel, the chairperson of the panel was required to submit a written summary of its findings and recommendations to the College President, with copies to the parties and the AAO. Then, within 24 days from that time, the President was required to issue a written statement to the parties outlining whether the complaint was substantiated and the steps the President planned to take. The AAO would then issue a letter to the parties, advising them that the matter was closed.

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<sup>1</sup> The Discrimination Complaint Procedure became effective in 2003. At the time the complainant filed her complaints with the College, the College also had another policy in place, titled "Harassment and Discrimination Policy and Complaint Procedure," which became effective on March 8, 2010; however, the Harassment and Discrimination Policy and Complaint Procedure cited back to the Discrimination Complaint Procedure from 2003. Therefore, OCR focused its analysis on the Discrimination Complaint Procedure.

<sup>2</sup> Employees were required to file their complaints within 90 calendar days of the alleged discrimination.

With respect to the complainant's complaints to the College, OCR determined that on or about October 29, 2014, the complainant sent an electronic mail message (email) to the College's Deputy Title IX Coordinator<sup>3</sup> to complain about four staff members. The Deputy Title IX Coordinator replied to the complainant and scheduled a meeting for October 31, 2014. Present at this meeting were the Deputy Title IX Coordinator, the Title IX Coordinator/Interim Assistant Affirmative Action Officer (AAO), and the complainant.<sup>4</sup>

During the meeting on October 31, 2014, the complainant described her allegations against two of her social work professors (SW Professor 1 and SW Professor 2) (Complaint 1). She stated that SW Professor 1 was hostile towards her by implying that the complainant did not know what she was talking about, being terse with her, and frequently reprimanding and embarrassing her during class because of her race. The complainant also described a group debate exercise in SW Professor 1's class, during which SW Professor 1 and other students were hostile towards her. She stated that while she was presenting in front of the class, SW Professor 1 was "snappy" towards her, singled her out as the only student from whom she sought clarification, and intimidated her. She further stated that other students in the class were angry with her although another student was to blame for her team's debate performance, and that other students were gossiping as a group after class. Additionally, she asserted that another student in the class was rude towards her. Similarly, the complainant stated that SW Professor 2 was frequently hostile towards her in class because of her race, such as by scowling at her or making statements such as, "go ahead and spit it out." She further stated that SW Professor 2 once questioned her husband, asking him whether he was also a student at the College. The complainant stated that she felt that both SW Professors 1 and 2 were trying to humiliate her and wanted her "to be the angry black woman." All meeting attendees denied to OCR that the complainant alleged that either SW Professor 1 or SW Professor 2 discriminated against her on the basis of her age.

During the meeting on October 31, 2014, the complainant also described interactions she had with her former XXXXX professor (the XXXXX Professor) and her then-current XXXXXXXX XXXXX instructor (the XXXXX Instructor) (Complaint 2). In particular, she stated that during a conference at the College on October 2, 2014, she was sitting next to the XXXXX Professor and discussing music. He then asked her, "do you like to fuck?" The complainant further stated that he smelled strongly of alcohol. She stated that she immediately stood up and backed away, though the XXXXX Professor brushed his arm against her buttocks when she stood up. She asserted that she later attended her XXXXXXXX XXXXX class on October 7, 2014, during which both the XXXXX Professor and the XXXXX Instructor were present. The complainant claimed that she tried speaking with the XXXXX Instructor about what the XXXXX Professor had done, as she knew the two were friends; however, the XXXXX Instructor scowled at her and was unapproachable. The complainant further stated that when class began, the XXXXX Instructor made an inappropriate comment about the ladies on campus and their outfits. She asserted that he then singled her out for a XXXXX exercise, humiliating her in front of the class.

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<sup>3</sup> The Deputy Title IX Coordinator is also the Assistant to the Vice President of the College. The complainant initially expressed her concerns to her faculty advisor, who referred her to the Deputy Title IX Coordinator.

<sup>4</sup> The College provided the AAO's notes from this meeting. The complainant also provided OCR with a summary of this meeting.

The AAO and Deputy Title IX Coordinator informed the complainant that the College would interview all four staff at issue. They also informed OCR that they advised the complainant of her rights under Title IX, the College's applicable policies, and of the various interim remedies that were available to her, including a no contact order; alternate class schedule; safety escort services; and academic support services. The College informed OCR that the complainant refused all interim remedies offered to her; however the complainant denied that the College offered any interim remedies. The complainant notified the AAO and Deputy Title IX Coordinator during the meeting on October 31, 2014, that she wished to file a formal complaint. Accordingly, on October 31, 2014, the AAO emailed the complainant a link to the College's Discrimination Complaint Procedure and accompanying complaint form.

*Complaint 1:*

On November 4, 2014, before the complainant completed or submitted the formal complaint form, the complainant met with the Chair of the College's Department of Social Work (Department Chair), along with the AAO and Deputy Title IX Coordinator, to discuss Complaint 1, against SW Professors 1 and 2. At the beginning of the meeting, she provided a written narrative of her complaints against these two professors.<sup>5</sup> At the end of this written statement, the complainant stated that she would not return to either SW Professor 1 or 2's class. She further stated that she was unable to sleep and was seeing a counselor. The Department Chair presented the complainant with some options: she could withdraw from the College, complete her courses with different professors, take different courses with different professors, take an incomplete, or meet with SW Professors 1 and 2 and continue the semester with them. The complainant was not interested in completing her courses with a different professor or meeting with SW Professors 1 and 2 to discuss a resolution. She stated that she wished to continue completing the required assignments, have a different professor grade her work, and avoid attending classes. She wished to avoid all contact with her professors and fellow students. The Department Chair told her it was not possible for her to complete her semester without attending classes, as she needed the classroom experience. He also stated he could not guarantee that she could avoid all contact with professors and students. The complainant expressed that the options that the Department Chair offered would cause too much hardship on her.<sup>6</sup>

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<sup>5</sup> The written narrative detailed the assertions the complainant had raised during her meeting with the Deputy Title IX Coordinator and AAO on October 31, 2015. She reiterated her allegation that SW Professors 1 and 2 singled her out and spoke to her in a condescending tone. The complainant asserted that when she expressed that she did not like how some professors instructed "professionals and returning adults," SW Professor 2 scowled at her and stated, "I'll make sure not to hold your hand." She further stated that SW Professor 2 interrupted her in class and said, "come on, spit it out girl!"; exaggerated the complainant's name at the start of each class; and "routinely" tried to make the complainant seem "ill-informed." The complainant further reiterated her assertion about SW Professor 2's comment towards the complainant's husband, and added that her comment was made to suggest that the complainant's husband was loitering on campus without permission. Additionally, the complainant asserted that she overheard conversations among her classmates and realized that both SW Professors 1 and 2 were "using my classmates in their own way to isolate and intimidate me." The complainant also provided details about the group debate assignment in SW Professor 1's class.

<sup>6</sup> The Deputy Title IX Coordinator had no further role in the complainant's complaints after this meeting. Her role is to handle complaints against students, not College staff. She participated in the meetings on October 31 and November 4, 2014, only because she was the first College administrator whom the complainant contacted.

On or about November 5, 2014, the complainant withdrew from all three of her social work classes.<sup>7</sup> She met with the Department Chair briefly to inform him of her decision. The Department Chair informed her that if she withdrew, she could reenroll later, but she could not start partway through the social work program; rather, she would have to restart the program from the beginning. The complainant did not engage in further discussion about her decision.

On or about November 13 and 14, 2014, the AAO interviewed SW Professors 1 and 2. She asked about the incidents the complainant had described, and received the professors' accounts.<sup>8</sup> SW Professor 1 informed the AAO that an issue had arisen during the class debate; a group of students approached her after class, crying, and stated that the complainant had screamed and cursed at her debate team prior to class and changed the format of their debate. SW Professor 1 further stated that two other students also texted her later to inform her of the complainant's behavior. SW Professor 1 stated that she had resolved to have the students meet in teams during the next class period; however, the complainant never returned to her class. SW Professor 2 denied the complainant's assertions that she scowled at the complainant, that she exaggerated the complainant's name during roll call, or that there was any hostility in the class towards the complainant. With respect to the complainant's assertion that SW Professor 2 told her to "come on and spit it out, girl," SW Professor 2 informed the AAO that she may have made such a comment because the complainant was verbose and unclear, and she was trying to help her clarify what she was trying to say for approximately ten minutes during class. The AAO informed OCR that she also interviewed a random sampling of students in the classes at issue; however, she was unable to recall any of the information provided by students and the College was unable to locate the AAO's notes from these student interviews.<sup>9</sup>

The complainant completed a formal complaint form outlining her allegations against SW Professors 1 and 2 on December 2, 2014. The complainant specifically marked race and age on the form as the discriminatory bases she was alleging.<sup>10</sup> The complainant indicated in her complaint that SW Professors 1 and 2 "intentionally used methods to isolate and single me out amongst my classmates," that SW Professor 1 distributed a syllabus which included "offensive" material, that SW Professor 2 presented a PowerPoint that "contained offensive material designed to paint a negative view of Black women," and that SW Professor 2 "used very aggressive and condescending tones when communicating with me and at one occasion referred to me as girl." OCR determined that the AAO obtained copies of all of SW Professor 2's PowerPoint slides; however, OCR determined that the AAO conducted no further interviews regarding the new assertions the complainant raised in her formal complaint form. Additionally, all College staff whom OCR interviewed denied any memory of an age-based allegation.

On January 28, 2015, the AAO sent a letter to the complainant, informing her of the outcome of her investigation related to SW Professors 1 and 2. In this letter, she stated that the investigation was complete, and that the College found that SW Professors 1 and 2 had not violated the College's Harassment and Discrimination Policy. This letter was returned to sender, and the

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<sup>7</sup> SW Professor 1 taught one class, and SW Professor 2 taught the other two classes.

<sup>8</sup> Following these interviews, from November 14 until December 1, 2014, the AAO was away on medical leave.

<sup>9</sup> The AAO is no longer employed by the College.

<sup>10</sup> The complainant also marked religion; however, because OCR lacks jurisdiction over allegations of religious discrimination, it did not address this allegation in its investigation.

College received the returned envelope on April 17, 2015. The College informed OCR that it attempted to contact the complainant to obtain her new address, but was unable to reach her.<sup>11</sup> The complainant informed OCR that she never received a determination letter from the AAO.

Based on the foregoing, OCR concluded that the complainant marked age as a discriminatory basis on her complaint form, but neither the AAO nor any other College witnesses had knowledge of an age-based allegation, and did not follow up with the complainant on the age-based allegation once the College received the complaint form. With respect to the complainant's race discrimination allegations against SW Professors 1 and 2, OCR determined that the College interviewed the complainant, SW Professors 1 and 2, and a random sample of students in the classes at issue, but it did so only with respect to the assertions the complainant made in her initial meetings and narratives to the College; the College conducted no further interviews to investigate the additional assertions the complainant made in her subsequent formal complaint. The only evidence OCR found regarding any investigation by the College after the complainant filed her formal complaint was of the AAO obtaining PowerPoint slides from SW Professor 2. Accordingly, OCR determined that there was sufficient evidence to substantiate that the College violated the regulations implementing the Age Discrimination Act and Title VI, at 34 C.F.R. § 110.10(a) and 34 C.F.R. § 100.3(a), respectively, by failing to respond appropriately to Complaint 1, that College staff had subjected the complainant to harassment because of her age and race.

Complaint 2:

On or about November 2, 2014, the complainant submitted a written narrative to the College,<sup>12</sup> summarizing Complaint 2; i.e., her complaint against the XXXXX Professor and XXXXX Instructor. The complainant also completed a formal complaint form, which is dated December 1, 2014. The complainant provided a copy of this complaint form to OCR; however, the College informed OCR that it did not receive a copy of this formal complaint.

On or about November 18, 2014, a new Assistant Vice President of Human Resources (Assistant VP) joined the College. Her role was to address complaints against College employees that may result in disciplinary action.<sup>13</sup> Because the AAO had already begun the investigation with respect to Complaint 1, the Assistant VP took responsibility only for Complaint 2.

The Assistant VP first contacted the complainant about Complaint 2 in mid-December 2014. She left a voicemail message for the complainant requesting a meeting; however, the complainant responded by voicemail, in or about mid-January 2015, stating that she did not wish to speak with the Assistant VP because she had already relayed her concerns to the College. The complainant requested only an email notification of the status of the College's investigation. Accordingly, on January 19, 2015, the Assistant VP sent the complainant an email, apologizing

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<sup>11</sup> The AAO informed OCR that she attempted to contact the complainant by email and phone; however, the College was unable to locate these emails or any other related records.

<sup>12</sup> The written narrative reiterated and detailed the assertions the complainant had raised during her meeting with the Deputy Title IX Coordinator and AAO on October 31, 2015.

<sup>13</sup> The Assistant VP informed OCR that she is one of three individuals at the College who may impose discipline against employees.

for her delay in initiating an investigation of Complaint 2 and explaining that the AAO was on leave when the Assistant VP joined the College. She further stated that she would conduct the investigation of Complaint 2, but that the XXXXX Professor had taken unexpected leave since early November 2014, and that she would interview the XXXXX Professor immediately upon the XXXXX Professor's return that semester. Finally, she noted that she would speak with the XXXXX Instructor later that week, and also requested to speak with the complainant.

On January 21, 2015, the College assigned the XXXXX Professor to an alternate, off-campus work location. The College negotiated this arrangement under the union's rules, as the XXXXX Professor was already facing other disciplinary actions, in addition to the complainant's complaint. OCR determined that Complaint 2 was one factor, among several, that the College considered in assigning the XXXXX Professor to an alternate work location.

On or about February 19, 2015, the Assistant VP interviewed the XXXXX Instructor. She attributed her delay in interviewing him to the various staffing changes in her office and the other cases she was handling. The XXXXX Instructor told the Assistant VP that he did not remember any of the incidents that the complainant had alleged. OCR determined that the Assistant VP did not interview any potential third party witnesses who may have observed the XXXXX Instructor's interactions with the complainant on the date at issue. The Assistant VP informed OCR that because the XXXXX Instructor did not remember any of the alleged incidents and the complainant refused to meet with her, she did not find any information to substantiate the complainant's allegations against the XXXXX Instructor.

OCR determined that the Assistant VP conducted no additional interviews with respect to Complaint 2. The Assistant VP confirmed with OCR that she never interviewed the XXXXX Professor. She explained that because he was facing other disciplinary actions, she had to deal with his union representative in any matters related to him. She asserted that she was unable to interview the XXXXX Professor because he, through his union, negotiated a retirement on April 3, 2015, to avoid an investigation. His retirement was effective at the end of the semester, and he remained on an alternate work assignment until he retired. The Assistant VP informed OCR that she concluded that the College had taken the necessary action and should close the investigation of Complaint 2.

The Assistant VP issued a determination letter regarding Complaint 2 to the complainant on April 3, 2015, stating that "[t]he investigation of the complaint has now been concluded. Based on the findings of my investigation appropriate personnel action has been taken." The Assistant VP explained to OCR that where the College imposes discipline against an employee, confidentiality rules prevent the College from sharing details of the discipline with the complainant; however, where a complaint is unsubstantiated, or where the College takes other non-disciplinary actions,<sup>14</sup> the College may disclose this information to a complainant. The Assistant VP also informed OCR that she found the complainant's allegations against the XXXXX Instructor to be unsubstantiated; however, OCR determined that she did not notify the complainant of that finding either in her determination letter or otherwise.

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<sup>14</sup> For example, the Assistant VP informed OCR that depending on the circumstances of each case, the College might notify a complainant that the College required a College employee to undergo training, counseling, or coaching, or that the employee was required to issue an apology.

Based on the foregoing, OCR concluded that the College failed to conduct a timely or adequate investigation of Complaint 2, or adequately notify the complainant of the outcome. With respect to the XXXXX Professor, the College failed to conduct an investigation of the complainant's allegations, and instead considered the XXXXX Professor's resignation as a reason not to investigate. With respect to the XXXXX Instructor, the College conducted a delayed investigation, did not interview any other witnesses besides the XXXXX Instructor, and failed to notify the complainant that it determined her complaint to be unsubstantiated. Accordingly, OCR determined that there was sufficient evidence to substantiate that the College violated the regulation implementing Title IX, at 34 C.F.R. § 106.31(a), by failing to respond appropriately to Complaint 2, that the XXXXX Professor and XXXXX Instructor subjected her to sexual harassment.

On April 28, 2016, the College agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified with respect to Allegation 1. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 2, the complainant alleged that the College retaliated against her for filing complaints alleging harassment on the basis of her sex, race and age, by placing her in "bad academic standing" on or about January 19, 2015. The complainant stated that she had "high grades" before she filed the complaints.

In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant was subjected to an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in a protected activity when she filed her complaints with the College. OCR further determined that the College was aware of her protected activity.

The College asserted that it does not internally assign students the status of "bad academic standing," but that it follows the State-established standards for New York State financial aid (Financial Aid Standards). The College asserted that because the complainant withdrew from all of her classes in November 2014, she failed to meet the Financial Aid Standards. As a result, the College sent an email to her, dated January 19, 2015, notifying her of her ineligibility for continued State financial aid. The College acknowledged that the complainant's grade point average (GPA) had been high before she withdrew; and further stated that if she were to return to the College, she could maintain the same GPA because her withdrawal did not change her academic standing within the College.

OCR determined that the College maintains a policy entitled, “State-Established Academic Standards for New York State Financial Aid – Undergraduate and Graduate” (Financial Aid Policy). This policy outlines the State’s Financial Aid Standards. In part, it states that students who receive New York State financial awards are required to maintain good academic standing in order to remain eligible for those awards. To maintain good academic standing, a student must “pursue[] the program of study in which he is enrolled (Pursuit of Program)” and “make[] satisfactory academic progress toward the completion of his or her program’s requirements (Satisfactory Academic Progress).” The Policy further states that State regulations define Pursuit of Program as “receiving either a passing or a failing grade in a certain percentage of a full-time course load.”

OCR determined that the complainant withdrew from her XXXXXXXX XXXXXX class on October 10, 2014, and from her three social work courses on November 5, 2014. She thereby completed zero credits during the fall 2014 semester, and failed to maintain the Pursuit of Program requirements.

OCR further determined that during academic year 2014-2015, 123 other students also failed to meet the Pursuit of Program requirements by completing less than a full, 12-credit course load. Of these 123 students, 28 completed zero credits during either the fall or spring semester. Each of these students received a “standard form letter” notifying them of their ineligibility for continued State financial aid. The College informed OCR that none of these students engaged in protected activity.

Based on the foregoing, OCR determined that the College had legitimate, non-retaliatory reasons for notifying the complainant of her ineligibility for continued State financial aid; namely, the complainant withdrew from all of her classes, completed zero credits during the fall 2014 semester, and failed to meet the Pursuit of Program requirements to maintain State financial aid. OCR determined that the proffered reasons were not a pretext for retaliation, because OCR confirmed that the complainant withdrew from all of her classes, the College acted in accordance with its policies and state regulations, and other similarly situated students who did not engage in protected activity were treated in the same manner. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the College retaliated against her for filing complaints alleging harassment on the bases of sex, race and age, by placing her in “bad academic standing” on or about January 19, 2015. Accordingly, OCR will take no further action with respect to Allegation 2.

This letter should not be interpreted to address the College’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 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 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 about OCR's determination, please contact Aditi Shah, Compliance Team Attorney, at (646) 428-3897 or [aditi.shah@ed.gov](mailto:aditi.shah@ed.gov); or Coleen Chin, Senior Attorney, at (646) 428-3809 or [coleen.chin@ed.gov](mailto:coleen.chin@ed.gov).

Sincerely,

Timothy C. J. Blanchard

Encl.

cc: XXXXX XXXXXX, Esq.