

December 8, 2014

Karla A. Fisher
Vice President, Academics
Butler Community College
901 S. Haverhill Road
El Dorado, Kansas 67042

Re: Docket # 07142223

Dear Dr. Fisher:

On June 9, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against Butler Community College (College), El Dorado, Kansas, alleging discrimination on the basis of disability and sex. This letter is to confirm the College has voluntarily submitted a Resolution Agreement (Agreement) to resolve allegation 1 of this complaint. For the reasons set out below, we have determined there is insufficient evidence to conclude that the College discriminated against the Complainant on the basis of sex as alleged in allegation 2 of his complaint.

Specifically, the Complainant alleged the College:

- 1) treated him differently on the basis of his disability (XXXXXX XXXXXX; XXXXXX XXXXXX XXXXXX XXXXXX (XXXXXX) when it removed him from the XXXXXX XXXXXX XXXXXX course and prohibited him from taking any further courses in the XXXXXX XXXXXX program; and
- 2) treated him differently on the basis of sex (male) when it removed him from the XXXXXX XXXXXX XXXXXX course and prohibited him from taking any further courses in the XXXXXX XXXXXX program for making comments regarding his relationships with women and his use of medication for hemorrhoids¹

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations

¹ The Complainant stated the College did not discipline female students who discussed inappropriate topics and touched other female students' breasts in the course and did not take action when the female instructor offered to administer suppositories to him, one of the few males in the course.

- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to Section 504, Title II, and Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Allegation 1

Prior to the completion of OCR's investigation, the College submitted a signed Agreement (copy enclosed) on December 5, 2014 that, when fully implemented, will address the allegation 1 of this complaint. OCR considers allegation 1 of this complaint resolved effective the date of this letter and will monitor the College's implementation of the Agreement. When OCR concludes the College has fully implemented the terms of the Agreement, OCR will close the complaint. If the College fails to carry out the Agreement, OCR may resume the investigation.

To protect individual's privacy, the names of the Complainant, employees, witnesses, and other parties were not used in the letter.

Allegation 2

The Complainant alleged the College treated him differently on the basis of sex (male) when it removed him from the XXXXX XXXXX XXXXX course and prohibited him from taking any further courses in the XXXXX XXXXX program for making comments regarding his relationships with women and his use of medication for hemorrhoids.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination for complaint allegation 2, OCR considered information the Complainant and College submitted, including relevant College policies and procedures; Complainant's cumulative academic file, letter and email correspondence between the Complainant and staff members of the College; notes from the XXXXX XXXXX program director regarding the Complainant, including her statement and interviews of some of the

Complainant's classmates and the adjunct instructor; and the campus security director incident report. OCR conducted a site visit to the College and interviewed the vice president for XXXXX XXXXX, the XXXXX XXXXX for XXXXX XXXXX, the XXXXX XXXXX XXXXX XXXXX, the XXXXX XXXXX XXXXX XXXXX, and the XXXXX XXXXX. OCR also conducted interviews with the Complainant, the adjunct instructor for the XXXXX XXXXX XXXXX, and other students enrolled in the course with the Complainant who agreed to be interviewed by OCR. The legal and factual bases for OCR's determination are set forth below.

Legal Standard

In order to establish that the College discriminated against the complainant on the basis of sex, OCR must find the following: (1) a College official or representative treated him differently than a similarly situated female student; (2) the different treatment occurred in the course of the College's official's or representative's authorized or assigned duties or responsibilities; (3) the College cannot articulate a legitimate, nondiscriminatory reason for the different treatment; and (4) if the College has articulated a legitimate, nondiscriminatory reason for the different treatment, the reason is merely a pretext, or cover-up, for unlawful discrimination.

Findings of Fact

Background

- The District provided OCR with copies of its policies and procedures regarding discrimination and harassment on the basis of disability and sex, including a copy of its grievance procedures for addressing complaints of discrimination and harassment on the basis of disability and its notice of nondiscrimination.

Complainant's Allegations

- The Complainant is a student enrolled at the College. He told OCR that prior to his enrollment at the College, he requested and received an accommodation based on his XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. He stated that he was enrolled in a XXXXX XXXXX XXXXX course but was ultimately removed from the course.
- The Complainant stated in his complaint and via email communication with an OCR staff member that he believes that he was wrongfully removed for making comments in the class he acknowledged were inappropriate but asserted the comments did not justify his removal. For instance, he told OCR that when a particular medication was being discussed in class, he stated he was taking it for his hemorrhoids and then he began to talk about relationships with women but that no one in his group told him

they were uncomfortable with the conversation. In fact, he believed the conversation was not offensive because the particular XXXXX XXXXX XXXXX they were shadowing made a return comment to him, “Oh, that’s why you have hemorrhoids because you got it up there.” The Complainant stated he ultimately dropped the conversation because he was embarrassed and the XXXXX XXXXX made fun of him. The Complainant stated that after this incident, he asked the instructor to place him with another group but the instructor denied his request. However, later in the day, he said the instructor told him he needed to leave the course and the facility where they were having class immediately, and he would need to speak with the College XXXXX the following afternoon regarding what had happened.

- The Complainant told OCR he immediately left the class, but instead of waiting until the following day to talk to the XXXXX, he went directly to the College campus to try to talk to her. He stated that he was informed he could not speak with her that day. The Complainant then went to the College’s disability services office, where he requested to speak with the XXXXX and other College leaders because he said he did not have the gas money to come back the following day. He stated that a campus XXXXX XXXXX offered to take him to see the campus XXXXX at that point. The Complainant stated he agreed and talked to the XXXXX for a while until the XXXXX arrived and was able to speak to him for a few minutes. He stated he was still supposed to meet with the XXXXX the following day with the campus XXXXX present. The Complainant stated he did not want to go to the meeting the following day because he was afraid he would be removed from the course. He stated that he believed removing him from the course was too severe, and that he should have received a reprimand. The Complainant denied he had caused a disruption when he left the course’s clinical rotation, but only said something about trying to talk to the XXXXX XXXXX of XXXXX XXXXX. He stated he did not curse or pose a risk to anyone’s safety. He also denied sexually harassing anyone because he did not bring any of the female students in his group into the conversation he was having with the XXXXX XXXXX, who worked for the clinical site. He stated he felt like he was discriminated against on the basis of sex because female students in the course could discuss sexual matters without anyone complaining. He described an incident in the course in which a female student whose name he could not recall stated to other students that her breasts were real and invited classmates to touch them. He stated that no one complained about that even though it made him uncomfortable because he felt like he had to look away. He said that the instructor, a female, also repeatedly offered to administer a suppository to him in front of the class and that embarrassed him. He felt like she made that offer to him because he was the only male in the class at times and it made him a little uncomfortable but indicated to him that this was an environment where his comments were not unwelcome. He did not assert that he felt harassed on the basis of sex but offered these incidents to establish that he could reasonably perceive his comments were not inappropriate or unwelcome and that he believed he was treated differently than females who engaged in similarly inappropriate behavior.

- The Complainant told OCR that he does not believe the College failed to provide him with the necessary accommodations. He instead believes they treated him differently because of his disability and his sex when they removed him from the XXXXX XXXXX XXXXX course. He stated that he appealed the decision to remove him from the course to the College’s XXXXX XXXXX of XXXXX XXXXX, who issued the College’s final decision upholding his removal from the XXXXX XXXXX XXXXX course. When asked if the College had prohibited him from taking classes altogether, he stated that he was removed only from the XXXXX XXXXX program and was unable to take any classes related to that program but he could take other courses at the College. He stated he stopped attending and withdrew from his other courses but was allowed to continue leading the campus XXXXX XXXXX, finished one class online, and received a reference from the XXXXX XXXXX’s faculty advisor.

College’s Response

- The College provided documentation indicating the Complainant was enrolled in the XXXXX XXXXX XXXXX XXXXX course in spring 2014. The XXXXX course is offered within the College’s XXXXX XXXXX program, and the program director described it as a XXXXX course designed to XXXXX XXXXX. The course involves lecture time at the XXXXX XXXXX XXXXX on campus and time at an XXXXX XXXXX XXXXX.
- On April 2, 2014, the Complainant was at the XXXXX XXXXX with students, the adjunct instructor for the XXXXX course, and a XXXXX XXXXX staff member. According to the statement of the XXXXX XXXXX XXXXX, she received a call around “noonish” from the XXXXX Course Instructor, who reported the Complainant was speaking inappropriately with students, staff, and “within hearing distance” of XXXXX, next to the XXXXX XXXXX. The XXXXX XXXXX XXXXX told OCR that in her telephone call with the XXXXX Course Instructor, she learned of the Complainant’s alleged inappropriate statements, including that he liked to have objects placed in his anus and that he had paid men to place objects in his anus. She stated students had also informed the XXXXX Course Instructor that the Complainant discussed his hemorrhoids and that he liked his part-time job at a nursing home because he worked the night shift and was able to sleep on the job. The Complainant allegedly made the comments to a XXXXX XXXXX XXXXX in the presence of two female students and some XXXXX XXXXX residents.
- The XXXXX XXXXX XXXXX stated that based on the report, she instructed the XXXXX Course Instructor to escort the Complainant out of the clinical site and tell him not to return that day. She also stated she informed the XXXXX Course

Instructor to tell the Complainant to meet at the XXXXX XXXXX XXXXX's office at 2:30 p.m. the next day. The XXXXX XXXXX XXXXX stated she also informed the XXXXX XXXXX XXXXX of the situation at a meeting she attended immediately after learning of the incident at the clinical site.

- The XXXXX Instructor's statement reports that on April 1, 2014, the day before the incident, she had expressed concerns to the Complainant about his competence to XXXXX XXXXX in accordance with XXXXX XXXXX. She also noted he did not take instruction well. Regarding the April 2, 2014 incident, she stated that the Complainant had talked about his hemorrhoids at the XXXXX XXXXX during his XXXXX XXXXX in the presence of a XXXXX XXXXX XXXXX XXXXX and two students, "escalating and sharing that he likes having things put up his rectum, sometimes having people paying him to put things up his butt, likes anal sex and sex toys." Her statement indicated that the Complainant was asked to stop talking about these subjects by the others but did not comply. She also stated that "students verbalized fearing him for his belligerence and anger when confronted about his behavior." She added that he would not talk with her when she dismissed him from the XXXXX that day. He told her that he had "flunked XXXXX anyway" and was very angry.
- According to the College's XXXXX of XXXXX XXXXX' statement, the Complainant arrived at her office at about 12:10 p.m. on April 2, 2014, and sat down at a chair in front of her desk. She stated that he did not knock at the door or introduce himself but stated, "I am with this office."² She stated she asked what she could do to help him and he requested to speak with the XXXXX XXXXX for XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX, or the XXXXX XXXXX XXXXX, stating he was not coming back to the College the next day and wasting gas "to be told no." He told her he had an appointment for 2:30 p.m. the following day to speak with the XXXXX Course Instructor and XXXXX XXXXX Director but did not want to wait. She stated he said he had had an issue in class and was treated unfairly and was asked to leave. The XXXXX XXXXX XXXXX XXXXX stated that she asked him what happened and he said that he did not want to talk about it, but he stated he did not have an outburst like they said he did. She stated that he started playing with an ink pen.
- The XXXXX XXXXX XXXXX XXXXX stated that she informed the Complainant that the College had a XXXXX on campus and he mumbled something she could not understand. She stated that she tried to calm him by asking if he liked being a "XXXXX." She stated he talked about working at night so he could be by himself because he did not like to be around people. She stated he continued to "take apart

² The Complainant was familiar with the XXXXX XXXXX XXXXX because he had worked with her to develop his accommodation plan for his XXXXX. The Complainant told OCR he did not request any accommodations for his XXXXX XXXXX-XXXXX disabilities and the documentation provided by the College supports that he did not make any such request.

the ink pen.” He then stated he was undergoing testing for XXXXX XXXXX. She asked him what they had been studying in class and he said they had been discussing suppositories and he knew what he said was wrong. She stated he mumbled something about younger students that she could not understand.

- In her statement, the XXXXX XXXXX XXXXX XXXXX reported that she knew that all of the College senior leaders were unavailable at that time because they were in budget meetings and that she informed him they were unavailable. She again offered him the opportunity to speak to the XXXXX. The Complainant repeated that he only wanted to talk to the senior leaders because he was not wasting gas to come back the next day and “be told no.”
- The XXXXX XXXXX XXXXX XXXXX stated that about 25 minutes had passed at this point and she realized she was not going to get the Complainant to leave her office and wait for the scheduled meeting. She stated he had also “twisted the pen to the point that it was in parts and he was playing with a wire.” She stated she called the XXXXX XXXXX XXXXX XXXXX and asked if he could come to her office. She stated the XXXXX XXXXX XXXXX arrived in approximately two minutes and introduced himself to the Complainant. The XXXXX XXXXX XXXXX stood in the doorway while she again attempted to get the Complainant to state what happened in his XXXXX class so the XXXXX XXXXX XXXXX could hear. She stated the Complainant again became agitated and said he was not going to talk about it with her, but only with the senior leaders, and he was not leaving until he did because he was not coming back to be told no. She stated that she would try to call the XXXXX XXXXX XXXXX XXXXX, but knew that she was unavailable. The XXXXX XXXXX XXXXX XXXXX stated that the XXXXX XXXXX XXXXX “reminded” her of a 1:30 p.m. meeting she had to attend. She said she told the Complainant that since no one was in it might be in his best interest to keep his appointment tomorrow. She stated that the Complainant repeated that he was not leaving until he met with the senior leaders and “continued to twist the destroyed the pen and wire.” She stated he then mumbled something and said he did not know what he would do if he went home. The XXXXX XXXXX XXXXX stated she asked him what he meant by that and he mumbled something she could not understand. She stated she asked the Complainant if he thought he could harm himself or other people. She stated he again mumbled, but said yes and shook his head affirmatively. According to the XXXXX XXXXX XXXXX XXXXX statement, the XXXXX XXXXX XXXXX stated he would be glad to walk him down to the XXXXX’s office. The Complainant left with the XXXXX XXXXX XXXXX at approximately 1:30 p.m.
- According to the XXXXX XXXXX XXXXX’s (XXXXX) report, the XXXXX XXXXX XXXXX XXXXX contacted him and asked him to come to her office because the Complainant was in her office, insisting on meeting with senior administrators. He informed OCR that he arrived to observe the Complainant in a

“verbal disagreement” with the XXXXX XXXXX XXXXX, who “repeatedly and calmly tried to address his concerns,” and suggested that the Complainant call the following day to get an appointment for a meeting. The XXXXX observed that the Complainant was “exhibiting highly agitated behavioral patterns, continuously twisting a metal spring that was in his hand, thumping upon leg with his hand, and interrupting” the XXXXX XXXXX XXXXX “too many times to count.” His pattern of speech was “rapid and erratic, and at times almost unintelligible.” When the XXXXX XXXXX XXXXX suggested that the Complainant go home and think about the situation, the Complainant started talking about going home and “something negative happening,” but refused to explain what he meant.

- The XXXXX convinced the Complainant to walk with him to the College XXXXX’s office to speak with her. As they left the building, according to the incident report, the Complainant spontaneously uttered, “I have a gun”. He clarified that he did not have it in his possession at that time but they began discussing ammunition and that the Complainant liked target practice. He denied having any long guns (rifles and shotguns) and stated his gun was presently at a pawn shop. The Complainant was calm in the XXXXX’s office while they waited for the XXXXX to finish with another appointment, for about 30 minutes. The Complainant told the XXXXX that he was previously informed that he could not return to another area community college as well as XXXXX XXXXX XXXXX XXXXX. He stated that he had been found with a bullet in his backpack while at class and that they had “freaked out” and that he could not go back until he paid some money.
- While the Complainant was in the XXXXX’s office, the XXXXX contacted the XXXXX XXXXX for XXXXX XXXXX XXXXX XXXXX, who informed him that the Complainant was found to be in possession of ammunition used for assault rifles when the Complainant was on campus. The XXXXX XXXXX told the XXXXX the Complainant was not arrested but was deemed a threat to school safety due to this incident and other “defined instances of disruptive and bizarre behaviors.”
- The XXXXX met with the Complainant and would not discuss the substance of the conversation to OCR, XXXXX XXXXX, but informed OCR that based on her conversation, she believed he was a threat to himself and possibly others.
- After the XXXXX met with the Complainant, they met together with the XXXXX XXXXX XXXXX and XXXXX XXXXX XXXXX in the XXXXX’s office. The XXXXX told OCR that attended the meeting as support for the Complainant while the XXXXX XXXXX XXXXX asked the Complainant questions about what happened at the XXXXX XXXXX.
- The XXXXX XXXXX XXXXX’s statement indicated she was in her office at 2:00 p.m. and received a telephone call from the XXXXX XXXXX XXXXX informing her that the Complainant was at the College XXXXX’s office and that she should

report to that office for the meeting with the Complainant. The XXXXX XXXXX XXXXX stated she immediately went to the College XXXXX's office and met with the XXXXX, the XXXXX, and the Complainant.

- The XXXXX XXXXX XXXXX described the Complainant as “very polite” and said he “had concerns this conversation had something to do with a woman’s breast” when she asked him what happened that day at the XXXXX XXXXX. She informed him she had instructed the XXXXX instructor to escort him out of the building based on his conversation at the XXXXX XXXXX. The Complainant stated he wanted to return to the class, but the XXXXX XXXXX XXXXX stated she needed to first gather facts, including his account of what happened but in the meantime, he could not return to the XXXXX XXXXX or the course. She stated that the staff at the XXXXX XXXXX had informed her he was not welcome back at that XXXXX based on their understanding of what he had said. She stated that at this point, the Complainant talked about a variety of topics. The XXXXX XXXXX XXXXX told the Complainant that she had been informed that his conversation involved inappropriate sexual content. In her statement, she noted that he responded that “it had to do with suppositories and he thought [the others] were OK with the conversation.” They agreed to meet the following day, April 3, 2014, at the XXXXX's office, to review the results of the XXXXX XXXXX XXXXX's investigation.
- The XXXXX XXXXX XXXXX stated that she interviewed the XXXXX Course Instructor the following morning, April 3, 2014. She also met individually with four students who were present in the XXXXX XXXXX area during the incident involving the Complainant. She told OCR that based on these interviews, she prepared handwritten accounts of the student's statements and had them each review and sign the statements immediately at the conclusion of the interviews. She provided copies of the statements to OCR. None of the student statements indicated that any of them had any concerns that the XXXXX Instructor or other students in the course were making inappropriate comments. Student 1's statement indicated that the Complainant had said he had “kinky stuff in his car,” but was “kidding.” She also indicated that he had said he had hemorrhoids and liked strap on toys for anal sex, and gets \$1000 for sex with a man. She indicated he “wouldn't stop talking about it.” Student 2's statement indicated that he talked about “good protective fun” with his “baby mama” and that he made comments about his sexual preferences. Student 3's statement indicated the Complainant talked about his hemorrhoids and she and others asked him not to talk about it because it was too much information. Student 3's statement also indicated the Complainant stated he liked suppositories and sex toys “shoved up his rectum” and liked to do it for money. Student 3's statement indicated another student told the Complainant it was okay if he liked it but to “leave it at home,” but that Students 1 and 2 told him they felt uncomfortable. Student 4's statement did not reference any of the Complainant's comments mentioned by the other students but discussed the Complainant discussing that he slept during his job.

- The XXXXX XXXXX XXXXX told OCR that based on the information she gathered, she determined it was appropriate and necessary to remove the Complainant from the XXXXX course immediately for violating student handbook conduct provisions regarding “ethical communication.” She stated she believed the College’s student handbook prohibited conduct that impeded or interfered with an activity or class, or substantially hinders or impinges on the rights of others. She believed the Complainant’s comments impeded and interfered with the class activities at the XXXXX XXXXX, and substantially impinged on the rights of other students as well as XXXXX XXXXX residents and staff. She stated that she relied heavily upon how the students said they felt as well as the concerns expressed by the XXXXX XXXXX staff regarding the Complainant’s comments. The XXXXX XXXXX XXXXX noted the Complainant was majoring in XXXXX and concluded he would still be able to continue taking online courses toward his degree program. She stated she spoke with the XXXXX XXXXX XXXXX, who approved of the decision. The XXXXX XXXXX XXXXX told OCR that her decision was based solely on the Complainant’s conduct at the XXXXX XXXXX, not his behavior afterwards when he returned to the College campus later that day. She stated she took comments like those made by the Complainant very seriously, adding she recently showed a film in one of her classes on XXXX XXXXX XXXXX XXXXX XXXXX, and when some students in the class snickered, she discussed with them that they were professionals and were preparing for a clinical rotation.
- The XXXXX XXXXX XXXXX XXXXX told OCR that the XXXXX XXXXX XXXXX also consulted with her about the proposed removal of the Complainant from the XXXXX course and agreed it was the appropriate decision based on the information gathered.
- The XXXXX XXXXX XXXXX stated she, the XXXXX course instructor, and the XXXXX met with the Complainant the following day, April 3, 2014, to inform him of the decision. The XXXXX XXXXX XXXXX noted in her description of the meeting that she informed the Complainant that he had violated the Student Code of Behavior/Ethics. They discussed his career plans and the Complainant stated that his major was XXXXX. She stated that the Complainant did not attempt to make eye contact with anyone during the meeting, had a “flat affect” with his head lowered, hands in lap, and only answered a question with head facing downward. The XXXXX XXXXX XXXXX stated she asked him twice if he had any questions and the second time he stated he wanted to talk with the XXXXX XXXXX XXXXX. The XXXXX then walked the Complainant over to the XXXXX XXXXX XXXXX office.³

³ The XXXXX XXXXX XXXXX is no longer employed with the College and the College did not provide any statement from the XXXXX regarding her involvement other than some email correspondence after the decision.

- The XXXXX XXXXX XXXXX’s decision to remove the Complainant from the course was upheld by the XXXXX XXXXX XXXXX and XXXXX XXXXX XXXXX XXXXX under the appeal process set forth in College policies and procedures for academic appeals. The XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX, and XXXXX XXXXX XXXXX XXXXX all told OCR that the decision was based solely on the Complainant’s comments at the XXXXX XXXXX, which were not perceived as threatening but extremely unprofessional and inappropriate.
- The Complainant also received a letter from the College’s XXXXX XXXXX XXXXX informing him of disciplinary consequences on April 3, 2014, the day after the Complainant made the comments and appeared at the XXXXX XXXXX XXXXX. The XXXXX XXXXX XXXXX stated in the letter that she met with the Complainant and the XXXXX in her office on April 3, 2014. The letter states that the XXXXX found the Complainant violated the College’s Student Code of Conduct #1 – General Rules and Polices and #2 – Orderly Conduct, which she referenced and are found in the Student Handbook on pages 6 and 7. She stated the Handbook identifies such violations as grounds for probation, suspension, or expulsion. However, because it was the Complainant’s first behavioral offense, she notified him of the following disciplinary sanctions: 1) he was not allowed to return to the College’s XXXXX XXXXX XXXXX; 2) he was to contact the College XXXXX every week either in person or via email; and 3) if he planned to come to any College campus he is to contact the College Public Safety Department by phone when he arrives or at least 15 minutes prior to his arrival. The XXXXX’s letter also stated that if the Complainant fails to comply with the sanctions, she may take further disciplinary action.
- On or about April 16, 2014, the Complainant submitted a written appeal to the College regarding the XXXXX XXXXX XXXXX’s decision to remove him from the XXXXX course. He initially submitted it to the wrong staff member, who ultimately forwarded the appeal to the XXXXX XXXXX XXXXX, the proper person for review. In his appeal, the Complainant stated that while he was making statements in the class regarding his hemorrhoids and sex with females, no one in the course told him to stop talking about these subjects and he believed the XXXXX XXXXX XXXXX XXXXX was not uncomfortable because she stated that the reason he had hemorrhoids was because he “got it up there.” The Complainant denied causing a scene when he left the XXXXX XXXXX, stating he “did not cuss” or put anyone’s safety at risk. He also denied sexually harassing anyone since he did not “involve any of the females in the conversation nor did I say I wanted them to anything to me.” [*sic*] He added that on an unspecified occasion, one of the nurses, a XXXXX XXXXX, went up to one of his classmates and commented that the student’s breasts were not real. The student responded that her breasts were in fact real and pushed on them with her hands to demonstrate they were real. The Complainant stated that he witnessed this interaction and was very uncomfortable but did not complain to

anyone about it, nor did he claim the instructor witnessed this interaction. He stated that because he witnessed this interaction, he believed that his own conversation on April 2, 2014 was appropriate. He also added that because the XXXXX instructor had jokingly offered to administer a suppository to him in front of the whole class, which also made him uncomfortable, his April 2, 2014 conversation did not warrant his removal from the course.

- In a letter dated April 21, 2014, the XXXXX XXXXX XXXXX denied the Complainant's appeal, stating she supported the decision made by the XXXXX Instructor and stated he could pursue the appeal through the College's academic appeals process, and that she had enclosed a copy of the appeal procedures. The process, as stated in the College's 2013-14 catalog, requires students to appeal the decision within 10 days in writing to the XXXXX XXXXX XXXXX XXXXX XXXXX, who will chair a meeting of the Student Review and Appeals Committee to consider the appeal. The Committee is to review information submitted by the student and the academic department in question and notify the student of its decision by mail. The student then may appeal the Committee's decision by submitting a written appeal to the XXXXX XXXXX XXXXX XXXXX within 10 days of the date of the Committee's decision. The decision of the XXXXX XXXXX XXXXX XXXXX is final.
- On Saturday, April 26, 2014, the Complainant sent an email to the XXXXX XXXXX XXXXX XXXXX XXXXX indicating he wished to appeal the decision to remove him from the XXXXX course. The XXXXX XXXXX XXXXX XXXXX XXXXX initially misunderstood that the Complainant was appealing the disciplinary actions of the XXXXX XXXXX XXXXX in her April 3, 2014 letter, but the Complainant clarified he wished to appeal his removal from the XXXXX course instead. On Monday, May 5, 2014, the XXXXX XXXXX XXXXX XXXXX XXXXX informed the Complainant by email that the Student Review and Appeals Committee would be considering his appeal at 2:00 p.m. the following day, May 6, 2014. The XXXXX XXXXX XXXXX XXXXX XXXXX informed the Complainant that he had all the information the Complainant had submitted to the XXXXX XXXXX XXXXX but asked the Complainant to forward any additional information prior to the Committee meeting.
- The Complainant responded by email at 12:20 a.m. on Tuesday, May 6, 2014. He stated that he did not believe the statements of any of the two high school female students present should be used against him because they never spoke to him at the medication cart when he made the comments at issue. He also stated that he believed the XXXXX instructor sexually harassed him by offering to administer a suppository to him in front of the class during lecture and during the second day of XXXXX. He stated he felt embarrassed and bothered by the XXXXX instructor's comment but did not say anything because he did not want to get in trouble with his classmates. He added that he had these types of conversations at his job and that he believed he

did not have these conversations in the presence of residents either at the XXXXX XXXXX or at his job outside of the College. He stated that no one, including the XXXXX instructor, XXXXX XXXXX XXXXX XXXXX, or students, told him to stop the conversation. He added that he did not cause any trouble when asked to leave the XXXXX XXXXX and only stated that he was going to talk to the XXXXX XXXXX XXXXX XXXXX XXXXX, and that his actions after he left the site were warranted because he “needed to find out what was going on and was kinda freaking out and could not find no one to talk to.” He stated that he wanted to resume his XXXXX class as soon as possible or have his record expunged.

- The XXXXX XXXXX XXXXX XXXXX XXXXX communicated the results of the Student Review and Appeals Committee review of the Complainant’s appeal in a letter dated May 6, 2014. In the letter, the XXXXX XXXXX XXXXX XXXXX XXXXX stated that the Committee determined, based on a review of all the information from the Complainant and the XXXXX XXXXX XXXXX, that the Complainant’s behavior disrupted the clinical setting. The XXXXX XXXXX XXXXX XXXXX XXXXX noted the Complainant himself acknowledged his behavior warranted a “stern talking to,” but the Committee found that the fact that the XXXXX XXXXX staff found his behavior unacceptable indicated the disruption was significant. The Committee determined that his removal was necessary to “maintain a positive educational environment and maintain the relationship with the XXXXX XXXXX.” The letter notified the Complainant that he had the right to appeal the Committee’s decision to the XXXXX XXXXX XXXXX XXXXX in writing within 10 days of the date of the letter, and provided her contact information.
- The XXXXX XXXXX XXXXX XXXXX XXXXX told OCR that the Committee reviewed the statements prepared by the XXXXX XXXXX XXXXX and the information submitted by the Complainant. He said the Committee based its decision to remove the Complainant from the course based on his statements regarding sex toys and anal sex, which they found to be inappropriate in the XXXXX XXXXX, and that they also expressed concern that several of the students also indicated in their statements that the Complainant had either offered to sell his Adderall to them or discussed snorting Adderall in the course, which they believed to be of significant concern for someone training to be a XXXXX XXXXX. The XXXXX XXXXX stated the Committee determined the inappropriate statements by themselves were enough to remove the Complainant from the course. The XXXXX XXXXX stated the Complainant never expressed to him any concerns about feeling uncomfortable or sexually harassed in the course prior to the Complainant being removed from the course. He stated no one else in the course had raised any such concerns of which he was aware.
- The XXXXX XXXXX XXXXX XXXXX XXXXX reiterated the Committee meeting was only to review the removal of the Complainant from the course, not the disciplinary actions taken by the XXXXX XXXXX XXXXX. He stated the XXXXX

XXXXX XXXXX did not consult with him prior to disciplining the Complainant and had the authority to do so. He stated he did review the letter as part of the Committee's deliberation process. The XXXXX XXXXX stated that the Complainant had not caused any additional concerns as far as he was concerned and that he would be willing to revisit lifting the disciplinary restrictions described in the XXXXX's April 3, 2014, letter to the Complainant.

- On Monday, May 19, 2014, the Complainant emailed the XXXXX XXXXX XXXXX XXXXX and asked if she had received his appeal. The XXXXX XXXXX XXXXX XXXXX responded by email later that morning that she had received it that morning and had requested additional documentation. She stated she would be back in touch with him as soon as she had received and reviewed it. In a letter dated June 4, 2014, she notified the Complainant that after reviewing additional documentation from him and others, she supported the removal of the Complainant from the course. She stated in the letter that she took very seriously the additional concerns the Complainant raised regarding student conduct and instruction, and that those concerns would be investigated and corrections made as warranted. She also stated that those additional allegations did not excuse his behavior; therefore, she agreed the removal was appropriate and the decision was final.
- The XXXXX XXXXX XXXXX XXXXX informed OCR that she had been in touch with the XXXXX XXXXX XXXXX and XXXXX XXXXX XXXXX throughout the appeal process and was aware of the Complainant's allegations and the position of the Department. She stated she supported the removal of the Complainant from the course because of his comments at the XXXXX XXXXX on April 2, 2014. She stated he had justified his conduct by accusing other students of behaving badly and asked the XXXXX XXXXX XXXXX to follow up on those concerns. She believed that his behavior on its own was egregious enough. She stated that she also considered what was best for the Complainant as a student and noted he was still taking online classes toward his degree at the College.

OCR's Efforts to Reach Other Students in the Course

- OCR attempted to interview other students in the Complainant's XXXXX course. OCR interviewed a female student (Student 1), whom the XXXXX XXXXX XXXXX interviewed as part of her investigation into the Complainant's statements made on April 2, 2014. Student 1 told OCR that during the XXXXX XXXXX that day, the Complainant started making comments about liking objects up his rectum and would mention using sex toys for money with other men. She added that he also offered to sell his Adderall and talked about all the knives he had in his truck. She stated the XXXXX XXXXX XXXXX XXXXX told the Complainant to please stop talking about these subjects but he would not stop. She stated she and the other students also told him to be quiet, because they were in front of XXXXX. She stated that there was nothing in their conversation prior to the Complainant's comments

about sex toys and anal sex that would have naturally raised or led to his comments. She stated that the only reason it was really uncomfortable was that he would not stop even after he was told to multiple times, but that he never said anything to threaten them. She stated that she did not complain to the XXXXX instructor until the Complainant told the teacher they were being rude to him. She said she told the XXXXX instructor about the Complainant's comments and the instructor said the Complainant had only said they were bullying or excluding him but did not explain the details of the conversation. When asked if she was aware of any female students or the instructor engaging in sexually explicit conversations or any other inappropriate conversations, she stated that she was aware of no such similar conversations by anyone in the class. She strongly denied that the XXXXX instructor ever offered to administer a suppository to the Complainant. She recalled that when the class discussed administering suppositories generally as part of the reading assignment, several students laughed and said things like, "I don't want to give one of those." She stated that she did not recall any conversations between students or staff members about anyone's breasts. Student 1 stated she did not recall the XXXXX instructor ever offering to administer a suppository to the Complainant. She stated that the XXXXX instructor told the Complainant to stop talking on his cell phone during class one day and that he ignored her request to put it away, saying the call was more important.

- OCR also interviewed another female student (Student 2), who also stated that she was also present at the clinical site when the Complainant made his comments on April 2, 2014. She stated the Complainant spoke about "butt sex and snorting pills" and perhaps "something about his sister" but could not recall further. She stated that she felt uncomfortable and believed that others present also felt uncomfortable based on their facial expressions. She said that she personally did not tell the instructor about the Complainant's comments but that two other female students did. She could not recall their names. Student 2 told OCR she told the Complainant to stop making what she believed to be inappropriate comments but he refused repeatedly. She stated she believed his comments were inappropriate because they were in a professional environment and trying to meet their XXXXX XXXXX XXXXX requirements. Student 2 did not recall any other students in the course discussing sexual activity or making comments of a sexual nature. She also stated that she never heard the XXXXX instructor offer to administer a suppository to the Complainant or anyone else, stating the instructor was "by the book" and that she could never imagine her doing such a thing. She stated that she and other students had to speak with the XXXXX XXXXX XXXXX about what happened that day and she signed something indicating she had spoken to the XXXXX XXXXX XXXXX about the incident. Student 2 told OCR that during the class lecture periods prior to April 2, 2014, the Complainant never threatened anybody but would get mad very easily and walked out of class on one occasion after students insisted he apologize for speaking loudly on his cell phone in class.

Complainant's Response to College's Denial of His Allegation

- OCR discussed the College's response to the complaint allegations with the Complainant in a telephone call on October 22, 2014. He stated that he still had no idea what really happened that warranted his removal from the program. When asked by OCR if he described past sexual experiences in a conversation at the XXXXX XXXXX in the presence of students, staff, and residents, he stated he had a conversation only with the XXXXX XXXXX XXXXX XXXXX and the two female students who were nearby were not participating in the conversation. He further stated that after he had "embarrassed himself enough," he stopped talking. He added that the XXXXX course instructor offered to do a suppository on him in front of other students on two occasions and that he told College staff members, whose names he could not recall, but he did not think they believed him. He told OCR that he did not report inappropriate conversations or behavior prior to the incident on April 2, 2014, stating he tried to keep it to himself. He stated that all the other females in the course talked about other inappropriate sexual behavior within earshot of others, and that even at his own job he had those kinds of conversations with others. When asked if he had spoken at the XXXXX XXXXX about sleeping during his job at a XXXXX XXXXX, he stated that he said that in a joking manner. He generally stated he felt he had been treated differently because he believed females could have the same kind of conversations and nobody complained about it, and that no one in the class actually told him to stop talking about it or that it made them uncomfortable. The Complainant denied that he ever offered to sell Adderall to students or discussed snorting it in the class. The Complainant also confirmed that he was still taking courses at the College toward a XXXXX degree but still wanted the opportunity to complete the XXXXX course so that he could get a pay raise at his current position.

Legal Analysis and Conclusion

OCR considered whether a preponderance of the evidence supported the Complainant's allegation that the College treated him differently based on his sex when it removed him from the XXXXX course and prohibited him from taking any further courses in the XXXXX XXXXX program for making comments regarding his relationships with women and his use of medication for hemorrhoids.

For OCR to conclude that a preponderance of the evidence supported the Complainant's allegation, OCR must establish that: 1) College officials treated the Complainant differently than a similarly situated female student; 2) the different treatment occurred in the course of the College's official's or representative's authorized or assigned duties or responsibilities; (3) the College cannot articulate a legitimate, nondiscriminatory reason for the different

treatment; and (4) if the College has articulated a legitimate, nondiscriminatory reason for the different treatment, the reason is merely a pretext for unlawful discrimination.

OCR first considered whether a preponderance of the evidence established that College officials treated the Complainant differently than a similarly situated female student by removing him from the XXXXX course due to his comments at the XXXXX XXXXX. The Complainant acknowledged that his comments at the XXXXX XXXXX were inappropriate and warranted discipline from the College, although he disagreed with the severity of the College's response. The Complainant asserts that other female students and the female XXXXX instructor also made inappropriate comments that made him uncomfortable but were not disciplined, thereby subjecting him to discrimination on the basis of sex. He specifically stated that the XXXXX instructor offered to administer a suppository to him in front of the entire class. He also alleged that a female student engaged in a conversation with others at the XXXXX XXXXX about whether her breasts were real and touched her breasts as part of the conversation. OCR attempted to interview the XXXXX instructor and students in the class. OCR was unable to interview the XXXXX instructor, but was able to interview two students, both of whom witnessed the Complainant making the comments that resulted in his removal from the XXXXX course. These students stated they never witnessed the XXXXX instructor offering to administer suppositories to the Complainant or anyone else, and they also never witnessed any other students in the XXXXX course making comments about sexual activity or of a sexual nature.

College officials interviewed by OCR stated that as of April 2, 2014, the day they received the complaint from the XXXXX course instructor about the Complainant's comments, they had received no complaints alleging any other students or the XXXXX course instructor made inappropriate comments of a sexual nature. While the Complainant subsequently asserted during the appeal of his removal from the XXXXX class that female students and the CMA course instructor made comments of a sexual nature which made him uncomfortable, the Complainant did not tell the XXXXX instructor or any other College official that he felt sexually harassed or uncomfortable at any time prior to April 2, 2014, the day that he was asked to leave the XXXXX XXXXX because of the comments he made. Therefore, OCR concludes there is insufficient evidence that the College's decision to remove the Complainant from the course and discipline him constituted different treatment based on sex, because there was no other similar complaint against a female student or the XXXXX instructor in the course at the time his conduct was reported to College officials. Accordingly, OCR is closing complaint allegation 2 effective the date of this letter.⁴

⁴ OCR notes that the XXXXX XXXXX XXXXX XXXXX informed the Complainant in her June 4, 2014 letter that the College would investigate the allegations he raised regarding the comments of female students and the XXXXX instructor in the course. As a matter of technical assistance, OCR notes that the College is obligated to respond to the Complainant's allegation, including speaking with the XXXXX instructor regarding the allegations against her, as part of a prompt and effective response to allegations of discrimination on the basis of sex.

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, we 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.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXX@XXXX.

Sincerely,

/s/Karl Menninger

Karl Menninger
Supervisory Attorney

Enclosure