



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Xxxxxx x. xxxxx
Abbott, Thomson, Mauldin, Parker & Beer, PLC
P.O. Box 450
405 S. Jackson Street
Jackson, Michigan 49204-0450

Re: OCR Docket #15-15-2001

Dear Mr. xxxxxx:

This letter is to notify you of the disposition of the complaint filed on October 3, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR) against Jackson College (the College), alleging that the College discriminated against a male student (the Student) on the basis of sex. Specifically, the complaint alleged that in the fall of xxxx the College failed to appropriately respond to the Student's complaints that his xxxxxxxx xxxxxxxxxxxx instructor discriminated against him on the basis of sex by not providing him with the xxxxxxxx necessary to take the online final exam.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106 (Title IX). Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the U.S. Department of Education (the Department). As a recipient of Federal financial assistance from the Department, the College is subject to Title IX. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated whether the College provided prompt and equitable responses to the Student's complaints of sex discrimination, as required by the Title IX implementing regulations at 34 C.F.R. § 106.8(b).

To investigate this complaint, OCR interviewed the Student and College staff. OCR also reviewed documentation submitted by the College. After a careful review of the information obtained during the investigation, OCR finds that there is sufficient evidence to conclude that the College failed to appropriately respond to the Student's complaints alleging that he had been

discriminated against on the basis of sex. OCR also finds that the College has failed to adopt grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination. OCR sets forth the bases for these determinations below.

Background

The College is a public institution with several locations in Jackson County, Michigan. The College offers several associate degrees, certificate programs, and transfer options to Michigan residents, and has a yearly enrollment of over 8,000 students, 15% of whom are enrolled as online students. During the period of time giving rise to the Student's complaint with OCR, the Student was enrolled at the College as an online student.

According to the Student, during the fall xxxx semester he was enrolled in an online xxxxxxx xxxxxxxxxxxx course at the College. The Student reported to OCR that, in order to take the final exam in that course, students were required to provide the course instructor with the location at which they planned to take the exam on or before a designated due date, which was one week before the final exam. Students were required to meet this deadline in order to receive the xxxxxxxx that would allow them to access and take the online exam. The Student initially told OCR that he submitted the required information to the course instructor prior to the deadline. However, the Student later stated that he did not submit the information by the deadline, but that he believed he submitted it to the instructor in "enough time," and thus he should have been permitted to take the exam. According to the Student, the course instructor did not reply to his late submission. The Student waited a few days and, when he did not hear from the instructor, he e-mailed her to inquire about the xxxxxxxxxxx. The Student did not receive a reply, and he was unable to take the final exam. The Student stated that he believed the instructor denied him access to take the final exam on the basis of his sex. He stated that when he complained about the alleged sex discrimination to the College it failed to take any responsive action.

The Student told OCR that he first complained about the alleged discrimination to the course instructor's supervisor, but that person did not want to deal with his complaint. He told OCR that he filed a more formal discrimination complaint alleging, among other things, sex discrimination, with an individual at the College's Student Center. The Student stated that he filed a total of xxxxx complaints about the alleged sex discrimination because someone from the College told him that the xxxxx xxx complaints were never received. He told OCR that the College did not respond to any of his complaints. According to the Student, each of these complaints contained the same information that he provided to OCR.

Summary of OCR's Investigation

- **The College's Alleged Failure to Respond to the Student's Complaints**

OCR reviewed documents the College submitted, which did not include any formal discrimination complaints filed by the Student. The College provided copies of e-mails sent between various College personnel and the Student regarding his complaint about the xxxxxxx xxxxxxxxxxx final exam and other grievances he had with the College. OCR discovered during

the course of its investigation that the alleged incident of sex discrimination in the xxxxxxxx xxxxxxxxxxxx course, as well as the Student's complaints, did not occur in the fall of xxxx, as alleged by the Student; rather, these events occurred during the summer of xxxx.

According to the documents provided by the College, the Student began sending his complaint e-mails in xxxx xxxx and the correspondence extended through late-xxxxxx xxxx. OCR's review of the Student's e-mails from xxxx xxxx until xxxxxxxx xx, xxxx, found that the Student's complaints regarding the final exam xxxxxxxx incident were strictly academic in nature. For example, in an e-mail dated xxxxxx x, xxxx, the Student wrote about the xxxxxx xxxxxxxxxxxx's xxxxxxxx errors and claimed that he was entitled to xxxxxxx xxxxxxx on some of his assignments. In response to these e-mails and others from the Student, College personnel requested that the Student submit a formal, written complaint, and provided him with links to the College's Academic Complaint Form and the Student Complaint Process, which are available on the College's website. One of the links provided, the link to the Student Complaint Process, states that "[a] student complaint is any non-civil rights related complaint generated by an individual student concerning the work-related activities of any faculty member (such as grade disputes)."

xxx--- paragraph redacted --- xxx

The course instructor forwarded the Student's e-mail to the program director for the College's xxxxxxxxxxx Department (the program director), who also serves as the lead faculty member for the College's xxxxxxxx xxxxxxxxxxxx course. The program director responded directly to the Student, by e-mail, on xxxxxx xx, xxxx. In her response, she explained why the Student did not receive a xxxxxxxx to take the exam, and she also wrote the following: "The gender of a student is never considered and your accusations are offensive. [Jackson College] faculty are always willing to work with all students and are dedicated to student success. The [xxxxxxx xxx xxx] policies are designed to create equal opportunity for students." Xx xxx xxxx xxxx xxx xxx xxxxxx, xxx xxxxxxxx xxxxxxx xxxx, xx xxx xxxxxxx xx xxxxxxx xxxx xxxxxx xxxxx xx xxx xxx, xxxxxxx xxxxx xx xxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxx. Soon thereafter, on xxxxxx xx, xxxx, the Student responded with another e-mail stating, in part, "xxx xxxxxx xxxx xx x xxx xxx xxxxxx xxxx xx xxx xxxxxx xxx xxx xxx xxxxxxxx xx xxx xx xx xxxx xxxx xxxxxxx." The program director forwarded this second e-mail to the Student's course instructor and another employee at the College. In that e-mail, the program director stated that she believed the Student's behavior was xxxxxxxxxxx and should be xxxxxxxxxxx.

Following this e-mail exchange, the Student's e-mails were forwarded to additional College personnel, who wrote that they intended to document the Student's "xxxxxxxx xxxxxxxx" and discussed possibly issuing a xxxxxxx xxxxxxx to the Student through the xxxxxxx xxxxxxxxxxx xxxxxxx. OCR's review of the e-mails found that College officials attempted to talk with the Student by telephone and sent him information about how to file an academic complaint. The College officials involved in this series of e-mails told OCR that they did not notify the Student of the process for filing a complaint of sex discrimination, did not refer him to the College's Title IX policy and complaint procedure, and did not refer his e-mails to the College's Title IX Coordinator.

The program director confirmed to OCR that, when she became aware of the above-referenced e-mails, she did not forward them to the College's Title IX coordinator. She told OCR that she did not believe that the Student's e-mails constituted complaints of discrimination. She stated that the Student did not file a formal complaint or follow the appropriate procedure. She stated that in order to file a formal complaint of sex discrimination the Student should have scheduled a meeting with the course instructor believed to have discriminated against him, notified the instructor of the alleged discrimination, and attempted to resolve the issue directly with the instructor. According to the program director, at this point, the instructor's duty would have been to respond to the complaint and notify the Student whether she agrees or disagrees with the allegations. If the instructor did not agree, and the issue remained unresolved, it was then the Student's duty to file another complaint with the chair of the department, who would review the complaint and issue a determination in writing. The program director told OCR that if the Student remained dissatisfied he could then file a complaint with the College's ombudsman, which would also be reviewed by the College's Dean of Occupational Health. The program director said that, because the Student did not follow this procedure and because he did not specifically use the word "discrimination," she viewed the e-mails as mere "accusations." She stated that she did not explain this complaint process to the Student and she did not provide him with any information about how to contact the College's Title IX coordinator. She explained that she forwarded the Student's e-mails to other College personnel to document the Student's xxxxxxxx, and not for the purpose of referring his complaints to the Title IX coordinator for review. The program director told OCR that she had not received training on the College's Title IX policies since her employee orientation and that she had not received any training specific to investigating complaints of sex discrimination under Title IX.

The Title IX coordinator confirmed to OCR that she never received the above-referenced e-mails from the Student or anyone at the College and she was not otherwise notified about his e-mails in which he made reference to being treated differently on the basis of sex. The Title IX coordinator agreed with the program director that the e-mails did not constitute complaints of sex discrimination and acknowledged that she did not issue any such conclusion to the Student in writing. She explained that the e-mails were not complaints but mere accusations that did not require her attention. Additionally, the College's Title IX coordinator stated that complaints that are academic in nature would not be processed by her. She stated that the Student's complaint was an academic complaint which she felt would be properly handled by the head of his academic department. The Title IX coordinator stated that she is the only individual designated at the College to respond to complaints of sex discrimination. She stated that there are a few staff in her office, but that she is solely responsible for receiving, investigating and responding to complaints filed under Title IX.

- **The College's Title IX Grievance Procedure**

In response to OCR's request for the College's policies and procedures regarding sex discrimination, the College submitted 15 different documents, including the following: (1) a "Discrimination & Harassment Complaint Form"; (2) a "Non-Academic Appeal Form"; (3) a print-out from the College's website entitled "Forms," which includes a link to the Academic Appeal Form, the Financial Aid Appeal, the Non-Academic Appeal Form, and the Harriet Meyer Student Emergency Fund Application; (4) an administrative policy on student appeals; (5) the

“2014-2015 Financial Aid Appeal Form”; (6) an administrative policy on harassment of students and employees; (7) an administrative policy on equal opportunity and non-discrimination; and (8) the College’s 2013 Student Handbook.

In a subsequent data response submitted on January 27, 2015, the College provided the following additional documents related to its Title IX grievance process: (1) a print-out from the College’s website entitled “What is a Student Ombudsman?”; (2) a document entitled “Grievance Procedure”; (3) a document entitled “Verifiable Documentation”; (4) a document entitled “Operating Procedure: Procedures for handling a grievance filed by a student with disabilities”; (5) a document entitled “Grievance Procedure for: Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendment Act of 1972; Americans with Disabilities Act (ADA) of 1992,” which says “Attachment A” in the upper left corner; (6) a “Non-Academic Appeal Form”; and (7) an administrative policy on student appeals.

OCR asked the Title IX coordinator to identify the policy that she relies on when processing complaints filed under Title IX, and she reported to OCR that any of the College’s above-identified policies pertaining to Title IX could be used. OCR asked the Title IX coordinator which complaint process she used to respond to complaints filed under Title IX, and she stated that she uses the complaint process entitled “Grievance Procedure for: Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendment Act of 1972; Americans with Disabilities Act (ADA) of 1992,” labeled as “Attachment A,” (hereinafter referred to as the grievance procedure) which was provided in the College’s January 27, 2015, data response. The Title IX coordinator stated that she was “almost certain” the College’s grievance procedure is contained in the College’s Student Handbook and posted on its website.

OCR’s review of the Student Handbook did not find the College’s grievance procedure and OCR also noted that the Student Handbook does not reference the College’s Title IX office or state that the College prohibits sex discrimination. The handbook contains information about the Student Ombudsman, who was identified by both College witnesses as someone who helps students determine how to file a number of different types of complaints and assists them during that process.

OCR reviewed the College’s administrative policy on equal opportunity and non-discrimination, which includes its statement of non-discrimination. The statement of non-discrimination states that the College does not, among other things, discriminate on the basis of sex or gender.

OCR also reviewed the grievance procedure identified by the Title IX coordinator to determine its compliance with Title IX. OCR’s review of the grievance procedure found that it states that an individual may file a complaint when an individual believes that the College “has inadequately applied the principles and/or regulations of: (1) Title VI of the Civil Rights Act of 1964, (2) Title IX of the Education Amendment Act of 1972, and (3) Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1992” The grievance procedure does not include a provision that the grievance procedure applies to complaints alleging discrimination carried out by employees, other students, or third parties. It states that the College’s Civil Rights Coordinator is responsible for responding to complaints filed under the grievance procedure and does not clarify that the Civil Rights Coordinator is also

the College's Title IX coordinator. Furthermore, the name and contact information provided for this individual is incorrect.

The first step of the grievance procedure requires the complainant to discuss the grievance informally and on a verbal basis with the College's Civil Rights Coordinator, who investigates the informal complaint and replies with an answer to the complainant. This step is presented as a prerequisite to steps two through five of the grievance procedure and does not provide for a formal investigation of the complaint. Additionally, this step does not set forth the complainant's right to end the informal process at any time to access the formal complaint process.

The second step of the grievance procedure initiates the formal complaint process. At this step, the complainant is required to submit a written statement to the College's Civil Rights Coordinator within five business days of completion of the above-referenced informal process. The Civil Rights Coordinator then conducts an investigation of the complaint and must reply in writing to the complainant within five business days. If the complainant wishes to appeal that decision, he or she may submit a signed statement to the Dean of Student Services (the dean) within five business days. To process the appeal, the dean meets with all parties involved, formulates a conclusion, and responds in writing within ten business days. If the complainant remains unsatisfied, the complainant may submit an appeal to the President of the College within five business days of receipt of the dean's decision. Within 40 business days of receipt of that appeal, the president or a designee must meet with the relevant parties and their representatives, and within ten days of that meeting, the president will send the disposition of the appeal to each of the parties.

The final step in the grievance procedure states that a complainant may file an "appeal" with OCR, but only if "the grievance has not been satisfactorily settled." The grievance procedure directs individuals to file with OCR's headquarters.

OCR's review of the grievance procedure found that it does not provide a description of the College's complaint procedure and does not set forth the specific steps that will be taken at each stage of the investigation. It does not provide reasonably prompt timeframes for completion of each stage of the investigation. It does not set forth the evidentiary standard the College will use to determine whether a violation of Title IX has occurred or is occurring. Additionally, the grievance procedure does not contain notice that both parties have the right to identify witnesses and present other evidence during the investigation. The grievance procedure also does not include a statement that the College will take steps to prevent further discriminatory conduct or harassment that is found to have occurred. The grievance procedure also does not require that the College will remedy any discriminatory effects on the complainant or others and does not contain a prohibition against retaliation against persons who report alleged discrimination based on sex or participate in related proceedings.

OCR also notes that the information set forth in the grievance procedure is inconsistent with the procedures and contact information set forth in other documents identified by the College as applicable to Title IX, listed above. For example, the grievance procedure states that the Civil Rights Coordinator is the person who handles complaints of sex discrimination, while the

College's Discrimination and Harassment Complaint Form states that a complaint against a faculty or staff member is to be submitted to the Human Resources Department, and a complaint against a student is to be filed with the Student Services Office. The administrative policy on equal opportunity and non-discrimination states that employee questions, concerns, or complaints regarding discrimination should be directed to the Executive Director or the Director of Human Resources, while student questions, concerns, or complaints should be directed to the Student Ombudsman or the Executive Dean of Students.

Finally, the College's Student Handbook, which does not specifically mention Title IX, instructs students to first handle complaints against faculty members by dealing directly with that faculty member. OCR notes that, according to the College witnesses' descriptions of the academic complaint process, the process described in the Student Handbook is the process being used by instructors and department heads when they receive accusations of sex discrimination with respect to academic matters.

Applicable Regulatory and Policy Standards

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination. In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR will review all aspects of a recipient's policies and practices, including the following elements that are critical to achieving compliance with Title IX:

- (1) notice to students and employees of the procedure, including where complaints may be filed;
- (2) application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;
- (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and the respondent to identify witnesses and other evidence;
- (4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- (5) written notice to both parties of the outcome of the complaint; and
- (6) assurance that the recipient will take steps to prevent recurrence of any sex discrimination found to have occurred, and to correct any discriminatory effects on the grievant and others, if appropriate.

Many schools also provide an opportunity to appeal the findings, or remedy, or both. In addition, because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in a harassment inquiry.

Title IX grievance procedures may include informal mechanisms for resolving complaints to be used if the parties agree to do so. The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities. The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated. While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sex discrimination complaints to ensure consistent practices and standards in handling complaints. Coordination of recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them. The school must make sure that all designated employees have adequate training as to what conduct constitutes sex discrimination and are able to explain how the grievance procedure operates.

Analysis

In this case, OCR first examined whether the College was notified that the Student was making a complaint of sex discrimination. The evidence shows that on xxxxxx xx,xxxx, the Student asserted in an e-mail xx xxx xxxxxx xxxxxxxxxx that he believed he was treated differently because he is male, and that he reasserted this claim on xxxxxx xx, xxxx, in an e-mail to the program director. Although the College asserted that the Student's e-mail did not constitute an allegation of discrimination, the College's employee responded to the Student in writing stating that the gender of a student is never considered. Thus, OCR concludes that the assertions made in the Student's e-mail put the College on notice that he was potentially stating a claim of sex discrimination, which was acknowledged when the program director commented that gender is not considered. Therefore, the College had an obligation to respond to the Student's complaints under the Title IX regulation.

OCR then examined whether the College appropriately responded to the Student's complaints, which would, at a minimum, include referring him to the College's Title IX complaint process and/or the College's Title IX coordinator. There is no dispute that the employees who received the Student's e-mails did not refer him to the Title IX coordinator but responded to the Student, in writing, on their own. The program director, who sent the written response to the Student's e-mails, was not the individual designated by the College to review such complaints, and she has not been trained to respond to complaints of sex discrimination. Furthermore, the College officials who received the Student's e-mails did not forward the e-mails to the Title IX coordinator or otherwise notify her of a potential complaint. Additionally, although the College asserted that the Student should have filed a formal complaint, the College's published documents, and its witnesses, provided contradictory information about what constitutes a formal complaint. Furthermore, the program director, who received the Student's complaints, did not recognize that notifying the Title IX coordinator is a step in filing a complaint of sex discrimination. Rather, she stated that the first step for a student to file a formal complaint of

discrimination is to meet with the individual instructor who is alleged to have discriminated. She then said that, if a student is not satisfied, he or she must file another complaint with the head of the academic department. Finally, the College did not apprise the Student of his right to file a formal Title IX complaint and failed to provide him with information about how to do so. Therefore, OCR concludes that the College failed to appropriately respond to the Student's complaint of sex discrimination, in violation of the Title IX regulation, as alleged.

Additionally, OCR finds that the College has not adopted grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination, in violation of 34 C.F.R. § 106.8(b). As stated above, the College has numerous and conflicting procedures that it identified as addressing its Title IX policy and procedures. As discussed above, OCR identified several compliance concerns with the grievance procedure used by the College's Title IX coordinator to address complaints of sex discrimination. The grievance procedure does not provide adequate notice to students and employees of the procedure, including where complaints may be filed; it does not state that it applies to complaints alleging discrimination carried out by employees, other students, or third parties; it does not state that both the complainant and the respondent have the opportunity to identify witnesses and other evidence; it does not have designated and reasonably prompt timeframes for the major stages of the complaint process; and it does not include an assurance that the recipient will take steps to prevent recurrence of any sex discrimination found to have occurred, and to correct any discriminatory effects on the grievant and others, if appropriate. The grievance procedure requires complainants to participate in an informal resolution process. The grievance procedure also inappropriately includes OCR as a level of appeal. Therefore, OCR concludes that the College's grievance procedures and corresponding documents are not in compliance with Title IX, in violation of the Title IX implementing regulation at 34 C.F.R. § 106.8(b).

Resolution

To resolve the above-described compliance findings, the College submitted the enclosed resolution agreement (the Agreement) to OCR on May 1, 2015. Under the terms of the Agreement, the College will:

- review the Student's complaints under its Title IX complaint process and issue a determination in writing to the Student;
- revise and submit to OCR for review and approval its policies and procedures regarding all forms of sex discrimination covered by Title IX, including sex-based harassment; and
- once approved by OCR, adopt, implement, and publicize the revised policies and procedures, and train relevant staff and students on the revised policies and procedures.

Technical Assistance

OCR reminds the College that, while it is permitted to document student behavior that is a concern to campus safety or otherwise discipline students for behavior that violates the College's code of conduct, Title IX prohibits the College from taking retaliatory action (such as discipline)

against a student because he accuses an instructor of sex discrimination, or otherwise makes a complaint of sex discrimination. Additionally, OCR notes that allegations of sexual assault and/or sexual violence were not the subject of the instant complaint and the College's compliance in responding to such complaints under Title IX was not investigated here. However, OCR has enclosed with this letter copies of OCR's April 2011 Dear Colleague Letter and the Questions and Answers on Title IX and Sexual Violence, to assist the College with understanding its obligations to respond to complaints under Title IX making such allegations. OCR has also enclosed a Title IX Resource Guide to assist the College in fulfilling its Title IX obligations.

Conclusion

Based on the foregoing, OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the College's implementation of the Agreement. Should the College fail to fully implement the Agreement, OCR will take appropriate action to ensure the College's full compliance with Title IX.

This concludes OCR's investigation of the complaint and 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 harmed individual may file a 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.

We appreciate the cooperation provided to OCR by the College during the course of this investigation. OCR is committed to a high-quality resolution of every case. If you have any questions about this letter or OCR's resolution of this case, you may contact xx. xxxx xxxx at (xxx) xxx-xxxx.

For questions about implementation of the Agreement, please contact xx. xxxxxx xxxxxx, who will be monitoring the College's implementation, by e-mail at xxxxx.xxxxxx@ed.gov or by telephone at (xxx) xxx-xxxxx. We look forward to receiving the College's first monitoring report by May 29, 2015.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosures