



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

October 22, 2015

Dr. Jianping Wang
Mercer County Community College
1200 Old Trenton Road
West Windsor, New Jersey 08550

Re: Case No. 02-15-2290
Mercer County Community College

Dear Dr. Wang:

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 Mercer County Community College (the College). The complainant alleged that the College failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging sex discrimination, in accordance with the regulation implementing Title IX of the Education Amendments of 1972, at 34 C.F.R. § 106.8(b).

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

In its investigation, OCR interviewed the complainant and the College's Title IX Coordinator. OCR also reviewed documentation that the complainant and the College submitted. In addition, OCR examined whether the College had: (a) designated and provided notice of a Title IX Coordinator; (b) provided notice that it does not discriminate on the basis of sex; and, (c) adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination/harassment on the basis of sex. OCR also examined the College's training provided to employees and students regarding Title IX. OCR made the following determinations.

A. Designation and Notice of Title IX Coordinator

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (the Title IX Coordinator). Pursuant to the regulation implementing Title IX, recipients are required to notify all students and employees of the name, office address, and telephone number of the designated Coordinator. OCR has also determined that an adequate notification includes providing the electronic mail (e-mail) address of the designated Coordinator.¹

OCR determined that the College has designated its Executive Director of Compliance and Human Resources as its Title IX Coordinator. The College has published a notice in its Student Calendar/Handbook (Student Handbook) stating that the Executive Director of Compliance and Human Resources is the Title IX Coordinator; however, the Student Handbook does not currently provide the Title IX Coordinator's name, office address, telephone number, or e-mail address.

The College separately publishes the Title IX Coordinator's title, office address, and telephone number in its Title IX Complaint Process for Students, which is available on the College's intranet through a password-protected website link. The College also distributes a Title IX Information pamphlet in hard copy to students during orientation. This pamphlet contains the Title IX Coordinator's title, office address, telephone number, and e-mail address; and identifies the website link for information on the complaint process. The Title IX Coordinator indicated that the College plans to make this pamphlet available in hard copy at certain buildings on campus where students frequently visit.

Based on the foregoing, OCR determined that the College has designated at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX; however, the College has not clearly or adequately notified students and employees of the Title IX Coordinator's identity and contact information as required by the regulation implementing Title IX, at 34 C.F.R. § 106.8(a).

B. Nondiscrimination Notice

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

¹ See *OCR's Questions and Answers on Title IX and Sexual Violence*
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

The College identified the following documents as publications that contain the College's notice of nondiscrimination: Student Handbook; Title IX Complaint Process for Students (CPS); Title IX Information pamphlet; and Prohibition Against Discrimination policy. The Student Handbook states that the College prohibits discrimination on the basis of sex and ensures students equal access to its programs, facilities, and events regardless of sex or other characteristics protected by law. The CPS and the Title IX Information pamphlet state that the College is committed to providing an environment that is free from discrimination on the basis of sex and gender, including sexual harassment and misconduct. The Prohibition Against Discrimination policy states that discrimination based on sex, including acts of sexual harassment, sexual misconduct, assault, rape, and other violence is prohibited and will not be condoned.

The Student Handbook, CPS, and Title IX Information pamphlet state that students who experience gender discrimination, sexual harassment, sexual assault, or sexual violence may file a report with the Title IX Coordinator. The Prohibition Against Discrimination policy does not mention the Title IX Coordinator. None of these documents state that questions about Title IX may be referred to the Title IX Coordinator or to OCR.

The Student Handbook is available on the College's website and is distributed in hard copy during the College's orientation. The CPS is available on the College's intranet through a particular password-protected website link, though it is not readily available on the College's main website. The Title IX Information pamphlet, which is distributed in hard copy during orientation and which the College plans to make available in buildings that students visit frequently, lists the website link for the CPS. The Prohibition Against Discrimination policy is available on the College's intranet and posted at the College's Human Resources office.

Based on the above, OCR determined that the College has provided notice that it does not discriminate on the basis of sex in the education programs or activities it operates, by publishing a nondiscrimination notice in various handbooks, pamphlets and procedural documents; but has not notified the College community that questions about Title IX may be referred to the Title IX Coordinator or to OCR. Accordingly, OCR determined that the College's notice of non-discrimination does not comply with the regulation implementing Title IX, at 34 C.F.R. § 106.9(a). Since the College did not provide any publications for employees containing a notice of nondiscrimination, or copies of employment applications with such a notice, it is also unclear as to whether the College has fully complied with the regulation implementing Title IX by ensuring that it has taken steps to notify applicants for employment, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities it operates.

C. Grievance Procedures

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student, employee, and third party complaints that allege any action which would be prohibited by the regulation, including sexual harassment and sexual violence. The regulation implementing Title

IX does not require a recipient to provide separate grievance procedures for sexual harassment or sexual violence complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution. Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a faculty member or administrator). 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. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome of the complaint and any appeal; and (f) assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others if appropriate.²

The College identified the CPS as the College's Title IX grievance procedures. OCR reviewed the CPS, current as of September 2015, to determine whether these procedures comply with the requirements of the regulation implementing Title IX.³

The CPS can be found on the College's intranet through a password-protected website link. The College's Title IX Information pamphlet also provides the website link. It is not clear how easily students and employees can find the link to the CPS on the website; and, the CPS link on the College's internal website is not accessible to individuals who do not have a password. In response to OCR's request for information about how the College provides notice to students and employees of the existence of the CPS complaint procedures, including where complaints may be filed, the College referred OCR to specific sections of its Student Handbook and Title IX Information pamphlet.

² See *OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, other Students, or Third Parties* (2001) ("OCR's 2001 Guidance"). See also, OCR's "Dear Colleague" Letter, dated April 4, 2011; which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (Apr. 4, 2011). See also *OCR's Questions and Answers on Title IX and Sexual Violence*, at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

³ The Title IX Coordinator informed OCR that the College is in the process of reviewing its policies and procedures, and that the College is contemplating revisions based on the recommendations issued by the White House Task Force to Protect Students from Sexual Assault.

Section VI of the Student Handbook states that students may file complaints about gender discrimination, sexual harassment, and sexual assault and violence with the Title IX Coordinator, who is identified as the Executive Director of Human Resources. It also states that the College will report complaints about sexual violence and assault to the Office of College Safety and the local police department. The Student Handbook also states that students may file an informal or formal complaint with the Title IX Coordinator and/or Security office. It states that informal complaints are for when students would like to work toward a resolution, and formal complaints may include a hearing and disciplinary action. The Student Handbook provides the names and telephone extensions for seven individuals whom students may contact to file a complaint; though it does not identify the positions, office addresses, or e-mail addresses of these individuals. The Title IX Coordinator informed OCR that these seven individuals are counselors at the College, although this is not specified in the Student Handbook.⁴

According to the Student Handbook, the Disciplinary Process is to be used for alleged violations of the code of conduct. The Student Code of Conduct includes sexual misconduct and sexual harassment as offenses in Section VII. Section VIII of the Student Handbook on Disciplinary Proceedings outlines judicial procedures; including notice and hearing procedures, the accused's right to representation by a staff member, and the accused's right to testify and present witnesses, among other issues. The Disciplinary Process does not state that the complainant is afforded comparable rights. The Title IX Coordinator informed OCR that contrary to what appears in the Student Handbook, the Disciplinary Process does not apply to Title IX complaints; rather, all such complaints are governed by the CPS.⁵

OCR determined that the Student Handbook does not provide sufficiently clear notice to students, employees, and third parties of the College's Title IX procedures. Specifically, it does not clearly identify how to initiate formal or informal Title IX complaints, and does not otherwise refer to the CPS. It also omits specific contact information for the Title IX Coordinator. In addition, although the Title IX Coordinator stated that the Disciplinary Process does not apply to Title IX complaints; the Student Handbook indicates otherwise.

The Title IX Information pamphlet states that students may file Title IX complaints with the Title IX Coordinator; and provides the Coordinator's address, telephone number, and e-mail address. It also provides contact information for the College's Security Office and local police departments. The Title IX Information pamphlet states that students may file an informal or formal complaint with the Title IX Coordinator and/or Security office. It states that informal complaints are for when students would like to work toward a resolution, and formal complaints may include a hearing and disciplinary action. It also states that harassment may be reported to a counselor, advisor, or any employee. The Title IX Information pamphlet does not specify that certain kinds of complaints (e.g., sexual assault/violence) are inappropriate for informal resolution. Finally, the pamphlet lists the website link for the CPS. OCR determined that the

⁴ The Title IX Coordinator advised OCR that the College plans to revise the Student Handbook to include in this section the Title IX Coordinator's title, office address, phone number, and e-mail address; and to delete the names and telephone extensions of the seven counselors.

⁵ The Title IX Coordinator also stated that the College is planning to revise the Student Handbook to clarify that the Disciplinary Process it outlines does not apply to sexual harassment or sexual misconduct, and that all Title IX issues should be reported to the Title IX Coordinator.

Title IX Information pamphlet provides sufficiently clear notice to students, employees, and third parties of the College's Title IX procedures, including where complaints may be filed.

Once a student locates the CPS, Section II of the CPS states that the process applies only to "student sex discrimination." It states that employees who have sex discrimination complaints against other employees should refer to the College's separate procedure about sexual harassment complaints and the grievance process under the employees' collective negotiation agreement; however, the College did not provide a copy of this procedure to OCR. Although Section II does not state explicitly that the CPS applies to complaints that students may file against College employees, Section IV.C.9 of the CPS makes reference to a situation in which the accused is an employee, and the Title IX Coordinator stated that the CPS applies to complaints against employees. The CPS does not mention complaints against third parties (i.e., someone other than a student or employee); however, the Title IX Coordinator stated that if a complaint were filed against a third party, the Title IX Coordinator would follow the CPS to the extent possible.

The CPS defines sex discrimination, sexual harassment, and sexual misconduct. It states that all incidents of sex discrimination, sexual harassment, and sexual misconduct should be reported to the Title IX Coordinator; and that complaints involving sexual misconduct should also be reported to the College's Office of Campus Safety. The CPS provides contact information for the Title IX Coordinator and the Office of Campus Safety.

The CPS includes a procedure to file an informal complaint, if both the complainant and the accused party agree to participate in the informal process. This option allows the parties to seek a resolution with the assistance of a neutral third party assigned by the Title IX Coordinator. The CPS states that the neutral third party must be a person who has been trained to sit on disciplinary hearing panels under the formal complaint process. If the informal process does not reach a resolution, the neutral third party cannot later sit on a disciplinary panel regarding the same complaint. If the informal process reaches a resolution, the neutral third party will share the outcome with the Title IX Coordinator, who will document the matter. The informal process sets a two-week timeline for when the Title IX Coordinator must designate a neutral third party; however, it does not contain a timeline for the overall process. The Title IX Coordinator informed OCR that, in practice, the informal process typically lasts approximately one week, and that the Title IX Coordinator would otherwise set a maximum timeline of 30 days, consistent with the timeframe the CPS allows for formal investigations. The CPS does not state that the complainant may end the informal process at any time and begin the formal stage of the complaint process; or that certain kinds of complaints (e.g., sexual assault/violence) are inappropriate for informal resolution. The Title IX Coordinator stated that the College allows the complainant to determine whether to initiate a formal process; and in serious cases, the College will recommend that the student pursue a criminal complaint through the local police.

The CPS states that during the formal complaint process, if any party feels threatened, the College may provide some protections, including limiting contact between the parties; however, the CPS does not state that the College will otherwise take affirmative interim steps to prevent further harassment or correct its effects.

For formal complaints, the Title IX Coordinator will assign a trained investigator to investigate the written complaint; though the CPS does not specify a time period within which this must happen. The Title IX Coordinator advised OCR that, in practice, it typically takes up to one week to review the complaint and assign an investigator. The CPS states that the investigation shall not exceed 30 days in duration, though it does not indicate when that 30-day period begins to run. The Title IX Coordinator informed OCR that the 30-day period begins to run from the time an investigator is assigned. The CPS also states that if an extension is necessary, that extension shall not exceed two weeks and the parties must be notified of the new timeline. Students involved in the formal complaint process may request a Student Advocate to assist them. Employees involved in the process may request assistance from their union representative; or if they are not in a union, they may choose an advocate to assist them.

After the investigation in the formal complaint process, the investigator submits findings to the Title IX Coordinator. The Title IX Coordinator will then convene a hearing panel to “adjudicate” the complaint. The CPS describes the composition of the hearing panel, but does not state whether the parties may testify or present witnesses; or whether the parties have equal opportunities to participate in the process. The CPS does not state the standard of proof used, although the Title IX Coordinator informed OCR that the hearing panel reviews the investigatory report and decides whether it is more likely than not that the violation occurred. The hearing panel also determines what kind of disciplinary action to take against students found in violation. The CPS states that the hearing panel sends its written determination to the complainant, the accused, and the Title IX Coordinator. The CPS does not state how long the hearing panel has to adjudicate the complaint; though the Title IX Coordinator stated that it should not take longer than 30 days, consistent with the time allotted for the investigation.

The CPS provides for either the accused or the complainant to file an appeal based on any of three enumerated grounds. Appeals are due within two weeks of receiving the hearing panel’s decision. If the accused is a student, the Executive Dean for Student Affairs will decide the appeal. If the accused is an employee, the Title IX Coordinator will decide the appeal. Appeal decisions are to be communicated to both parties and the Title IX Coordinator, though the CPS does not indicate how long the College has to decide the appeal. The Title IX Coordinator stated that while the CPS is silent on the issue, the appeal process should not take longer than two weeks.

Based on the above, OCR determined that the CPS provides for written notice of the outcome of the investigation and appeal to both parties. OCR determined, however, that the College does not provide adequate notice to students and employees of the procedures, including where complaints may be filed; as the Student Handbook does not refer to the CPS. Further, OCR determined that the CPS procedures, as written, do not apply to discrimination by employees and third parties. OCR also determined that the CPS does not specifically provide for adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; designated and reasonably prompt timeframes for all major stages of the grievance process; or an assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate. Accordingly, OCR determined that the College has not adopted grievance procedures providing for prompt and equitable resolution of student, employee, and third party

complaints that allege any action which would be prohibited by the regulation, as required by the regulation implementing Title IX, at 34 C.F.R. § 106.8(b).

D. Training

Universities must ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence; that other responsible employees know that they are obligated to report sexual violence to appropriate school officials; and that all other employees understand how to respond to reports of sexual violence. A school should provide training to all employees likely to witness or receive reports of sexual violence; including teachers, professors, school law enforcement unit employees, school administrators, school counselors, general counsel, athletic coaches, health personnel, and resident advisors.⁶ Training for employees should include practical information about how to prevent and identify sexual violence, including same-sex sexual violence; the behaviors that may lead to and result in sexual violence; the attitudes of bystanders that may allow conduct to continue; the potential for re-victimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training should also explain responsible employees' reporting obligations, including what should be included in a report; any consequences for the failure to report; the procedure for responding to students' requests for confidentiality; and provide the contact information for the school's Title IX coordinator. A school also should train responsible employees to inform students of the reporting obligations of responsible employees; students' options to request confidentiality; available confidential advocacy, counseling, or other support services; and students' rights to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.⁷

OCR reviewed information the College submitted concerning trainings the College has provided about Title IX; including a list of trainings and attendees, and training materials. The Title IX Coordinator informed OCR that the College has approximately 400 full-time staff members between its two campuses.

At the beginning of each semester, the College holds a "college assembly" during which the Title IX Coordinator spends approximately five or ten minutes notifying the faculty and staff in attendance that they must report sexual harassment and sexual misconduct, that they should call the Title IX Coordinator about any Title IX issues, and that the College has a procedure in place to process Title IX complaints. OCR determined that the College also held two other trainings in academic year 2014-2015. The first was conducted by the Chief Prosecutor of the county's

⁶ OCR's Questions and Answers on Title IX and Sexual Violence states that if a resident advisor is required to report other misconduct that violates school policy, then the resident advisor would be considered a responsible employee obligated to report incidents of sexual violence that violate school policy. See Section D-5 of OCR's Questions and Answers on Title IX and Sexual Violence at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁷ See Section J-1 of OCR's Questions and Answers on Title IX and Sexual Violence, at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

Special Victim's Unit; and 26 people attended.⁸ The training provided an overview of Title IX, and then focused on criminal sexual assault laws and the criminal investigation process. It did not provide College-specific procedures or contacts relevant to Title IX. The second training was conducted by the Association of Title IX Administrators (ATIXA). It provided an overview of Title IX law and guidance, definitions of sexual harassment, the role of Title IX coordinators, reporting responsibilities, investigation stages and best practices, capacity and consent, and retaliation; however, it did not provide College-specific procedures or contacts. Ten people attended this training, six of whom also attended the prosecutor's training.

Another presentation was conducted by a Rutgers University representative during an orientation for new students. Approximately 25 students attended. Of the 24 slides in its PowerPoint presentation, one slide is about Title IX. It states the College's antidiscrimination policy; notes that Title IX encompasses sexual harassment, sexual assault, and sexual violence; states that the College must investigate complaints; and states that retaliation is not allowed. It does not provide or refer to College-specific procedures or contacts.

On October 13, 2015, the College agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified in this letter. OCR will monitor the implementation of the resolution agreement. If the College fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

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.

⁸ The data response does not specify the attendees' titles; it contains only a handwritten sign-in sheet or list of names. The Title IX Coordinator stated that the 26 people consisted of a mix of security personnel, administration, and faculty from both campuses.

If you have any questions regarding OCR's determination, please contact Aditi Shah, Compliance Team Attorney, at (646) 428-3897 or aditi.shah@ed.gov; or Eric Bueide, Compliance Team Attorney, at (646) 428-3851 or eric.bueide@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.