

February 16, 2017

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

Re: Case Nos. 02-16-2238 and 02-16-2306  
City University of New York (CUNY) – City College

Dear Chancellor Milliken:

This letter is to inform you of the determinations made by the U.S. Department of Education, Office for Civil Rights (OCR), based on its investigation of the above-referenced complaints filed against CUNY City College (the College). With respect to Case No. 02-16-2238, the complainant (complainant 1) alleged that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to her complaint (complaint 1), filed on XXXXXXXX xx, xxxx, alleging that students engaged in sexually harassing behavior toward her. With respect to Case No. 02-16-2306, the complainant (complainant 2) alleged that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to a complaint she made to the College in XXXXX xxxx (complaint 2), alleging that a professor subjected her to sexual harassment during the xxxx xxxx semester.

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 these complaints under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides generally that, except as provided elsewhere in the regulation, “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education programs or activities” operated by recipients of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature and can include sexual advances, request for sexual favors, and other verbal, nonverbal, or physical conduct. Hostile environment sexual

harassment is sexually harassing conduct that is sufficiently serious to limit an individual's ability to participate in or receive benefits, services or opportunities in the recipient's program. If OCR establishes that conduct of a sexual nature occurred, OCR will examine additional factors to determine whether a sexually hostile environment exists. If OCR determines that a sexually hostile environment exists, OCR will then determine whether the recipient took immediate and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects. The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX.<sup>1</sup>

Case No. 02-16-2238

OCR interviewed College staff members in the course of investigating Case No. 02-16-2238. OCR also reviewed documentation that complainant 1 and the College submitted. OCR made the following determinations.

During academic year 2015-2016, complainant 1 was enrolled in a xxxxxxxx xxxxxxxx xxxxxxxx program at the XXXX XXXXXXXX XXXXXX.<sup>2</sup> As part of complainant 1's xxxxxxxx program, she taught a xxxxxxxx xxxxxxxx course (class 1) at the College during the xxxx xxxx semester. Complainant 1 alleged that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to complaint 1, filed on XXXXXXXX xx, xxxx, alleging that students in class 1 engaged in sexually harassing behavior toward her.

OCR determined that complainant 1 sent an electronic mail (email) message to the chair of the College's XXXXXXXX XXXXXXXX Department (chair 1) on XXXXXXXX xx, xxxx, stating that students in class 1 made sexual gestures behind her back during class on XXXXXXXX xx, xxxx. Complainant 1 stated that she did not know the names of the students involved, but she would determine the students' identities on a later date. She further stated that she planned to speak with the students outside of class to inform them that they were not welcome in class 1 if they acted disrespectfully, and she asked for suggestions about how she should handle the matter.

On XXXXXXXX x, xxxx, chair 1 forwarded complainant 1's email to the College's Title IX coordinator (the coordinator). The coordinator contacted complainant 1 the same day, provided complainant 1 with a copy of the College's "Discrimination Complaint Form," and informed complainant 1 that she was available to meet with her.

Complainant 1 met with the coordinator on or about XXXXXXXX x, xxxx. The coordinator informed OCR that they discussed the incident that occurred in class 1 on XXXXXXXX xx, xxxx. Specifically, complainant 1 stated that on that date she was helping a student in class 1, and two other students were sitting behind her and next to each other in their desks. She stated that she heard loud laughter coming from behind her, and when she turned around, one of the students "quickly [sat] down while

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<sup>1</sup> OCR conducted a complete review of CUNY's policies and procedures with respect to sexual harassment complaints in its recent investigation of OCR Case No. 02-13-2052.

<sup>2</sup> Complainant 1 xxxxxxxx from the XXXXXXXX XXXXXX during the xxxxxx xxxx semester.

he was still moving his pelvic area around in a sexual manner” and the other student continued to laugh for 10 seconds. Complainant 1 still did not know the identity of the students who engaged in the alleged inappropriate conduct. The coordinator stated that she informed complainant 1 about available counseling resources, but complainant 1 stated that xxx xxx xxxxxxxx xxxxxxxxxx xxxxxxxxxx. The coordinator stated that complainant 1 also told her that she felt “disrespected,” but she did not have any safety concerns about returning to the classroom.

Complainant 1 unsuccessfully attempted to send an email to the coordinator on Xxxxxxxx x, xxxx, identifying the students who engaged in the inappropriate conduct and witnesses. Complainant 1 also attempted to send the coordinator a copy of her completed complaint form by email on Xxxxxxxx xx, xxxx. The coordinator informed OCR that neither email reached her because complainant 1 mistakenly sent the emails to herself. Complainant 1 sent the coordinator an email on Xxxxxxxx xx, xxxx, which included a copy of her completed complaint form, and the string of emails she had previously attempted to send.

In her complaint form, dated Xxxxxxxx xx, xxxx, complainant 1 identified the two students (students A and B) who had allegedly engaged in the conduct on Xxxxxxxx xx, xxxx. Complainant 1 identified three witnesses, student C (whom she stated was sitting in the area where the alleged incident occurred), student D (the student she was helping at his desk), and student E (whom she stated might have been sitting in the area where the alleged incident occurred). In her complaint form, complainant 1 indicated that she believed the alleged discrimination was continuing, and wrote that the continuing discrimination was “moderate[], in terms of ridiculing me and not taking [class 1] seriously.” Complainant 1 stated that students A and B were absent from class 1 the week following the incident, but when they returned they “could barely avoid giggling” and “did not take [class 1] seriously.”

The coordinator provided complainant 1’s complaint form to the College’s Xxxxx XX xxxxxxxxxxxxxx (the investigator) on Xxxxxxxx xx, xxxx. The investigator contacted complainant 1 by email on Xxxxxxxx xx, xxxx, and arranged for a Skype meeting with complainant 1 on Xxxxxxxx x, xxxx. The investigator missed the Skype interview, and complainant 1 thereafter contacted the investigator by email on Xxxxxxxx x, xxxx, requesting that the investigator avoid further delay and proceed with the investigation based on the information she had previously provided to the coordinator.<sup>3</sup>

During the course of her investigation, the investigator conducted a personal observation of the classroom at issue in order to observe the layout of the room.<sup>4</sup> The investigator also interviewed students A and B on Xxxxxxxx x and x, xxxx, respectively. Students A and B both informed the investigator that they were laughing at a computer wallpaper, and denied that student A stood up and made an inappropriate sexual gesture towards complainant 1. Both students A and B also stated that student C sat behind them. Student B advised the investigator that student C may have observed the

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<sup>3</sup> Complainant 1 also notified the investigator that “the abuse is continuing to some extent,” and she stated that she was “now forced to deal with this on my own to be able to manage [class 1] and protect my dignity.” Complainant 1 also sent the coordinator an email on Xxxxxxxx x, xxxx, stating that “I am continuing to be exposed to students’ disrespectful behavior.”

<sup>4</sup> The investigator informed OCR that she observed the room after class 1 had concluded for the semester.

incident in class. The investigator interviewed student C on XXXXXXXX xx, xxxx.<sup>5</sup> Student C stated that she could see students A and B in class, but she could not remember whether she attended class on XXXXXXXX xx, xxxx. Student C further stated that she never saw student A move his pelvis in class, and she did not see anyone do anything inappropriate towards complainant 1.

The investigator advised OCR that she discussed with student A where student D sat in class 1, but the investigator informed OCR that she did not believe student D would have been able to see what occurred, since complainant 1 had stated that she was assisting student D at his desk when the alleged incident occurred. The investigator could not recall whether she discussed student E with students A or B. The investigator informed OCR that she could not recall specifically why she did not interview students D and E. The investigator informed OCR that during her investigation, she also considered whether complainant 1 was experiencing continuing discrimination. She stated that based on the information complainant 1 provided, she determined that the continuing misconduct complainant 1 complained of was related to students' inattention and disrespect, but that there was no information to suggest there was ongoing sexual misconduct.<sup>6</sup> Complainant 1 acknowledged to OCR that there were no further incidents of sexual harassment.<sup>7</sup>

The investigator's investigative report, dated Xxx x, xxxx, outlines her determination that there was insufficient evidence to support complainant 1's allegations. With respect to student A, the report stated that complainant 1 had her back to student A. The investigator concluded that complainant 1's assertion that student A was suddenly sitting down while simultaneously moving his pelvic area in a sexual manner "seems impossible and at least, ambiguous". The investigator also stated that the investigation did not reveal any persons who witnessed student A moving in a sexual manner during the class. With respect to student B, the report stated that student B asserted that he and student A were laughing at a computer screensaver, and there was no evidence that student B was laughing at complainant 1. The investigator notified complainant 1 and students A and B of the outcome of the investigation by letters dated Xxx x, xxxx, which was 166 days after complainant 1 filed her complaint with the College on XXXXXXXX xx, xxxx.

With respect to the length of the investigation, both the coordinator and investigator informed OCR that the investigation of complainant 1's complaint took longer because of the investigator's caseload. The investigator also stated that the investigation was delayed because part of the investigation occurred while students were on break following the xxxx xxxx semester.<sup>8</sup>

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<sup>5</sup> The investigator contacted student C by email on XXXXXXXX x and xx, xxxx, and XXXXXXXX xx, xxxx, and attempted to schedule an interview sooner.

<sup>6</sup> The investigator also stated that the misconduct complainant 1 described in her complaint and her email on XXXXXXXX x, xxxx, was not retaliatory because she had not yet notified students A and B of complainant 1's complaint. Complainant 1 stated that her students continued to engage in "abusive behavior," and she had to "struggle with class management and try to protect [herself] without any help from the administration." Complainant 1 further stated that she felt "unsafe" and "had to constantly watch [her] back to prevent similar incidents" because she believed her authority in class 1 was "considerably undermined," students did not take class 1 seriously, and there was a general lack of respect.

<sup>7</sup> Complainant 1 stated, however, that she felt unsupported by the College. Specifically, complainant 1 stated that on XXXXXXXX x, xxxx, a student in class 1 had a "xxxxxxx xxxxxxxxxx," but College staff members did not respond to her email requests for help. Complainant 1 did not allege that this was related to her sexual harassment complaint in any way.

<sup>8</sup> OCR determined that the College's xxxx term ended on XXXXXXXX xx, xxxx, and classes restarted on XXXXXXXX xx, xxxx.

Based on the foregoing, OCR determined that the College's investigation was not prompt, as it took the College 166 days to notify the parties of the outcome following the time complainant 1 submitted her complaint to chair 1, including 69 days following the time the investigator completed her final interview with student C. The coordinator's and investigator's explanation that the delay was caused by the investigator's caseload does not excuse the College from its obligation to promptly conduct investigations regarding allegations of possible sexual harassment. Moreover, the investigator's explanation that students were on break for part of the investigation does not excuse the College from taking an additional 69 days to notify the parties of the outcome following the time the investigator completed all of her interviews. OCR also determined that the College's investigation was not adequate, in that the investigator did not conduct an interview with students D or E, who were identified as potential witness to the incidents at issue in complainant 1's complaint and who could have provided relevant information. Accordingly, OCR determined that there was sufficient evidence to substantiate complainant 1's allegation that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to complaint 1, filed on XXXXXXXX xx, xxxx, that a student in her class engaged in sexually harassing behavior toward her. The College's failure to respond appropriately violated 34 C.F.R. §§ 106.8 and 106.31.

Case No. 02-16-2306

In its investigation of Case No. 02-16-2306, OCR interviewed complainant 2 and College staff. OCR also reviewed documentation that complainant 2 and the College submitted. OCR made the following determinations.

Complainant 2 alleged that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to complaint 2, alleging that a professor subjected her to sexual harassment during the xxxx xxxx semester. Specifically, complainant 2, who was enrolled in the College's Master of XXXX XXXX XXXXXXXX XXXXXX program (the program) in xxxx xxxx, alleged that she filed a written complaint with the College in XXXXX xxxx, in which she alleged that the professor of her XXXXXXXX XXXXX course (class 2) sent her unwanted emails that were sexual in nature. Complainant 2 alleged that the College did not respond appropriately to complaint 2, because it: (a) failed to complete an investigation of complaint 2 in a timely manner; (b) waited until the completion of its lengthy investigation to change her final grade for class 2;<sup>9</sup> and (c) determined that the professor's conduct did not constitute sexual harassment. Complainant 2 also alleged that the coordinator inappropriately asked her what she might have done to provoke the professor's emails; and, never told her that a review of all relevant emails between complainant 2 and the professor was necessary to fully investigate the complaint, after complainant 2 provided copies of only some of the relevant email correspondence to the College.

OCR determined that on or about XXXXXXXX xx, xxxx, complainant 2 orally complained to a co-director of the program (co-director 1) that the professor gave her a Xx for class 2, instead of a higher grade, because complainant 2 rejected the professor's sexual advances. In support of her assertion, complainant 2 showed co-director 1 screenshots of emails that she had received from the

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<sup>9</sup> Complainant 2 alleged that this impeded her ability to apply to other graduate school programs in XXXXXX xxxx.

professor. OCR reviewed the screenshots and determined that the messages were sexual in nature.<sup>10</sup>

Co-director 1 advised complainant 2 to retain the emails and told her that he would look into the matter. Co-director 1 sought guidance from the other co-director of the program (co-director 2) and a professor in the XXXXXXXX department (professor 2), and then reported the matter to the Chair of the XXXXXXXX Department (chair 2) on XXXXX x, xxxx. Chair 2 advised co-director 1 to tell complainant 2 that she should file a grade appeal<sup>11</sup>; and that chair 2 would report the alleged sexual harassment to the coordinator in accordance with CUNY's Policy on Sexual Misconduct (the CUNY policy).

Less than one hour later, and prior to chair 2's notifying the coordinator of the matter, complainant 2 submitted a written complaint (complaint 2) to chair 2 and co-directors 1 and 2. In complaint 2, complainant 2 alleged that the professor sent her sexually suggestive emails, and did not give her a final grade of X for class 2 because she rejected his sexual advances made in the emails. Complainant 2 attached copies of emails the professor sent to her, but did not include any of the emails she sent to the professor in response. By email dated XXXXX x, xxxx, chair 2 informed complainant 2 that she had forwarded complaint 2 to the coordinator. Chair 2 also informed complainant 2 that the XXXXXXXX department could not consider any grade appeal until the coordinator completed the investigation of complainant 2's sexual harassment complaint; however, chair 2 offered to provide complainant 2 with a letter explaining that her grade for class 2 was under a pending grade appeal, which complainant 2 could then share with any graduate programs to which she was applying.

The coordinator investigated complaint 2 pursuant to the CUNY policy, which applies to complaints filed by students, employees and third parties at the College, and prohibits faculty members from engaging in intimate relationships with students with whom they have a professional responsibility and from engaging in sexually harassing behavior. On XXXXX xx, xxxx, the coordinator met with complainant 2 to discuss her complaint, and reviewed the emails complainant 2 provided. The coordinator informed OCR that she explained to complainant 2 that it would help the investigation if complainant 2 provided the entire email exchange between complainant 2 and the professor, rather than just emails the professor sent to complainant 2.<sup>12</sup> The coordinator informed OCR that some of

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<sup>10</sup> Statements the professor made in the emails included the following: (1) "f\*\*\*ing love looking at you. I stare"; (2) "later I'm in crowded place but we play differently. I want my fingers in your mouth;" (3) "get wet [complainant 2]. I know you can can can"; and (4) "can I wait till you taste you on my fingers to respond."

<sup>11</sup> The College's grade appeal procedure indicates that if a student believes that his/her final grade is inaccurate then the student must take the following steps: 1) immediately make an appointment to discuss the matter with the instructor. The student may request that the instructor review all exams and papers for an understanding of why the grade was received. 2) If step one does not resolve the issue, the student is supposed to talk to the chair of the department in which the course is given. If necessary, the student can appeal the grade to the dean of the division. 3) If step two fails to resolve the issue, the final step would be to prepare a written appeal to the appropriate Committee on Course and Standing. The College accepted complainant 2's email to the chair 2 on XXXXX x, xxxx, in which she reported the alleged sexual harassment and requested the immediate review of her grade in class 2, as both an allegation of sexual harassment and as a grade appeal; however, the College held complainant 2's grade appeal in abeyance until it issued a determination with respect to complainant 2's sexual harassment complaint.

<sup>12</sup> Complainant 2 advised OCR that she did not provide the email exchange because the coordinator made her feel uncomfortable when she attempted to go through each of the professor's emails and asked her if she did anything to provoke the emails. She also said that she thought that the College was going to get the rest of the emails from the professor and that the College never followed up with her for the emails, or informed her that they had not been able to get in contact with the professor.

the emails that complainant 2 provided contained inappropriate profanity and sexual innuendos; however, the coordinator stated that the emails were difficult to interpret out of context.<sup>13</sup> OCR determined that complainant 2 told the coordinator that she had told the professor, “I’m not engaging you,” in response to his emails. Complainant 2 also reported to the coordinator that the professor expressed an “attitude” toward her “with his eyes,” which was apparent to others in class 2, and that the professor also went out on dates with another student in class 2. The coordinator informed OCR that she advised complainant 2 about the availability of counseling services during this meeting.

By email dated Xxxxx xx, xxxx, the coordinator asked complainant 2 to provide the entire email exchange between complainant 2 and the professor. By email dated Xxxxx x, xxxx, complainant 2 responded that she would not provide the rest of the emails, because she believed she provided sufficient information to demonstrate that the professor violated the CUNY policy. Complainant 2 also informed the coordinator that she was uncomfortable that the coordinator questioned her about why the professor might have sent the emails, and what role complainant 2 might have played in encouraging such behavior. Complainant 2 also informed the coordinator that the professor had been removed from teaching classes at the University of Xxxx Xxxxxxx Xxxxxxx, where he was scheduled to teach in Xxxxxxx xxxx, and that his speaking engagements had been canceled, based on reports of “predatory” behavior. Complainant 2 concluded by stating that her primary focus was to rectify her academic record, and that she “would like this matter to be resolved as quickly as possible so that [she] can continue on with the rest of [her] graduate work and put this wholly negative experience behind [her].”

On Xxxxx x, xxxx, chair 2 asked the coordinator whether the Xxxxxxx department could proceed with complainant 2’s grade appeal. The coordinator responded that to date, the information obtained indicated that the professor violated the CUNY policy regarding faculty relationships with students; however, no determination had been made regarding whether the professor sexually harassed complainant 2 and/or whether complainant 2’s grade was issued in retaliation for rejecting the professor’s sexual advances. The coordinator informed chair 2 that the English department should not reevaluate complainant 2’s grade until such determination was made.

By email dated Xxxxx x, xxxx, the coordinator informed complainant 2 that the emails complainant 2 provided in support of complaint 2 indicated that the professor appeared to be in violation of the CUNY policy prohibiting faculty relationships with students; however, the College would need to investigate further to determine whether there was sufficient evidence that the professor sexually harassed complainant 2. Specifically, the College would need to obtain additional information to determine whether the emails sent by the professor were unwanted; and whether the professor issued complainant 2’s final grade for class 2 in retaliation for complainant 2’s rejecting unwanted sexual advances. The coordinator stated that she was requesting the full relevant email exchange between complainant 2 and the professor not to suggest or imply that complainant 2 acted inappropriately or provoked the professor’s conduct, but so that the coordinator could conduct a complete investigation of the matter that was fair to both parties. The coordinator stated that she would attempt to contact the professor to obtain information from him regarding complaint 2, and would inform complainant

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<sup>13</sup> The coordinator stated that it was unclear whether the emails were unwelcome. She also stated that it appeared that complainant 2 may have cut and pasted portions of the emails out of order, as some of them did not follow a coherent train of thought.

2 of any determinations. The coordinator reminded complainant 2 of available counseling services. The coordinator stated, “[i]f you change your mind and decide to provide the emails I requested, please let me know.”

In the course of her investigation of complaint 2, the coordinator sent a letter to the professor on Xxxxx x, xxxx, both at an Xxxx XXXXXXXX XXXXXXXX address<sup>14</sup> and at the last known address the College had on file for him, notifying him of complaint 2 and requesting that he contact the coordinator to discuss complaint 2. The professor did not respond. The coordinator did not attempt to call or email the professor, nor did she send any follow-up letter. The coordinator did not inform complainant 2 that the professor did not respond or that she was unable to obtain a copy of the complete email exchange from the professor.

In the course of her investigation of complaint 2, the coordinator also interviewed a friend of complainant 2’s who was also enrolled in class 2 (student F) on Xxxxx xx, xxxx, upon the suggestion of co-director 1.<sup>15</sup> The coordinator determined that student F did not have any knowledge of any sexually harassing conduct of the professor.<sup>16</sup> Sometime after Xxxx x, xxxx, and before Xxxx xx, xxxx, the coordinator reviewed a blog post that was posted on an online forum of women in the xxxxxxxx community, which was identified by complainant 2, Student F and co-director 1. The blog post contained “xx-xxxxxxxxxxxxxxxxxxxx [ ] xxxx xxxxx xxx xxxx xxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxx” with the professor.<sup>17</sup> The coordinator informed OCR that although she reviewed the blog posts, she could not easily identify the posters, and it was not clear that the statements were related to alleged actions that occurred at the College. Accordingly, the coordinator did not attempt to identify and/or interview any of the blog posters. The coordinator informed OCR that she also did not interview any other students enrolled in class 2 during her investigation. The coordinator also informed OCR that she did not conduct any inquiry into whether complainant 2’s final grade for class 2 was commensurate with her performance in class 2, as it was her understanding that the grade appeal was being handled by the academic department.

In emails dated Xxxx xx and Xxxx x, xxxx, complainant 2 inquired about the status of her complaint and grade appeal. By email dated Xxxx x, xxxx, chair 2 informed complainant 2 that the coordinator needed to complete her investigation of complainant 2’s sexual harassment complaint before a grade change could be contemplated. By email dated Xxxx xx, xxxx, complainant 2 complained to the College’s provost that she had not received a response to her grade appeal, and that the investigation of her sexual harassment complaint had not been completed. The provost responded that the coordinator’s investigation was being finalized, and that chair 2 would contact complainant 2 soon

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<sup>14</sup> The coordinator used an Xxxx XXXXXXXX XXXXXXXX address that she located through a Google search.

<sup>15</sup> Complainant 2 did not identify any specific witnesses, but generally asserted that others in class 2 would have observed the professor’s attitude towards her.

<sup>16</sup> Student F informed the coordinator that it was possible that the professor could have sexually harassed students, because the professor was “condescending” towards women.

<sup>17</sup> One post, posted on Xxxxx x, xxxx, that contained a first name, stated “[the professor] xxx xx xxxx xxxxxxxxxxx xxx X xxxxxxxxxxx xxx xxxxx xxxxx xxx xxxxxxxxxxxxxxx xxxxx – xxxxxxxxxxxxxxx xxxxxxx, xxxx xxxxxxxxxxxxxxx xxxxxxx. Xx xxxx xxxx xx xxxxxx xx xxxxxxxxxxx xxx xxx xxxx xxx xxxxx. Xx xxx xxxxxxx xxx xx xxxxx xxx xxxxx xx xxx xxxxx .... Xx xx xxxxxxxxx.” A reply to that post from “anon,” posted on Xxxx x, xxxx, stated “X xxx xx xxxx xxxxx . . . , xx xxx xx xx xx xxx X xxxxxxxxxxx xxx. Xxx xxxxxxx xxx xxx xx xxxxxx xx xxx.”



regarding the grade appeal.<sup>18</sup> On Xxxx xx, xxxx, the coordinator issued her investigative report, in which she determined that the professor sent complainant 2 sexually explicit and inappropriate emails, thereby violating the CUNY policy regarding faculty relationships with students; however, the coordinator determined that there was insufficient evidence that the professor sexually harassed complainant 2, because there was insufficient evidence to conclude that the professor's emails to complainant 2 were unwanted. The coordinator further determined that there was insufficient evidence to determine that the professor issued complainant 2 a final grade of Xx for class 2 in retaliation for complainant 2 rejecting the professor's sexual advances, because there was no evidence complainant 2 rejected the professor's alleged sexual advances and complainant 2 did not provide any evidence demonstrating that the final grade was based on a retaliatory motive.<sup>19</sup> The coordinator notified complainant 2 of the outcome of the investigation by email dated Xxxxxx x, xxxx.<sup>20</sup>

The coordinator informed OCR that the investigation took almost five months to complete because she was waiting for complainant 2 to provide her with all of the relevant emails and she was waiting for the professor to respond to her request for an interview. As stated above, the coordinator did not attempt to contact the professor again after he did not respond to her letter dated Xxxxx x, xxxx; and, the coordinator did not follow up with complainant 2 regarding the emails at any time after Xxxxx x, xxxx. The coordinator also did not notify complainant 2 or the professor of any delay in the investigation.<sup>21</sup>

Based on the foregoing, OCR determined that the College's investigation of complaint 2 was not prompt, as it took the College 150 days to notify complainant 2 of the outcome of the investigation, and there was insufficient justification for the delay. Additionally, the coordinator failed to notify complainant 2 of the delay, in accordance with the CUNY policy. OCR also determined that the investigation was incomplete, because the coordinator did not make sufficient effort to contact the professor or interview students or others who might have knowledge pertinent to complaint 2. Additionally, the College unnecessarily delayed complainant 2's grade appeal pending the lengthy investigation of her sexual harassment complaint. Therefore, OCR determined that there was sufficient evidence to substantiate that the College discriminated against complainant 2, on the basis of her sex, by failing to respond promptly and equitably to complaint 2, made in Xxxxx xxxx, in which complainant 2 alleged that a professor subjected her to sexual harassment. The College's failure to respond appropriately violated 34 C.F.R. §§ 106.8 and 106.31.

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<sup>18</sup> By email dated Xxxx xx, xxxx, chair 2 informed complainant 2 that she would proceed with the grade appeal and vacate the initial grade. On Xxxx xx, xxxx, chair 2 submitted work complainant 2 completed in class 2 to co-director 2 for review. On Xxxxxx x, xxxx, co-director 2 informed chair 2 that she believed that complainant 2's work merited a final grade of X for class 2. On Xxxxxx x, xxxx, chair 2 signed a change of grade form approving a change of complainant 2's final grade for class 2 from Xx to X.

<sup>19</sup> When asked what standard of proof the coordinator applied in reaching this determination, the coordinator informed OCR that she did not apply any standard of proof because there was not enough evidence to consider regarding the alleged sexual harassment.

<sup>20</sup> The coordinator did not send any notice of the outcome of the investigation to the professor.

<sup>21</sup> The CUNY policy states that "[t]he college shall make every reasonable effort to ensure that the investigation and resolution of a complaint are carried out as timely and effectively as possible . . . While some complaints may require extensive investigation, whenever possible, the investigation of complaints should be completed within sixty (60) calendar days of the receipt of the complaint. If there is a delay in completing the investigation, the Title IX Coordinator shall notify the complainant and the respondent in writing."

On February 14, 2017, the College agreed to implement the enclosed resolution agreement in order to resolve Case Nos. 02-16-2238 and 02-16-2306. OCR will monitor the implementation of the resolution agreement.

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 individual OCR cases. 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. Complainants 1 and 2 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 individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or [Lauren.Numeroff@ed.gov](mailto:Lauren.Numeroff@ed.gov); Tiffany Lyttle, Compliance Team Attorney, at (646) 428-3754 or [Tiffany.Lyttle@ed.gov](mailto:Tiffany.Lyttle@ed.gov); or Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or [Logan.Gerrity@ed.gov](mailto:Logan.Gerrity@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXX XXXXX, Esq. and XXXX XXXXXXXXXX, Esq.