

May 8, 2017

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

Re: Case No. 02-17-2032
The City University of New York – New York City College of Technology

Dear Chancellor Milliken:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the City University of New York (CUNY) – New York City College of Technology (the College). The complainant alleged that the College discriminated against her, on the basis of her race, by failing to respond appropriately to her complaint, made on XXXXXXXX XX, XXXX, that she was subjected to a racially hostile environment.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department. Accordingly, OCR has jurisdiction to investigate this matter under Title VI.

Pursuant to the regulation implementing Title VI, at 34 C.F.R. § 100.3(a), no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program provided by a recipient of financial assistance from the Department.

Racial harassment that creates a hostile environment is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party, as well as conduct that is physically threatening, harmful, or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. If OCR determines that harassing conduct occurred, and that the recipient had actual or constructive notice of the harassment, OCR will

examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

OCR interviewed the complainant during the course of the investigation. OCR also reviewed documentation that the complainant and the College submitted.

OCR determined that the complainant enrolled in the College in spring XXXX semester, and is currently enrolled. The complainant alleged that the College discriminated against her, on the basis of her race, by failing to respond appropriately to her complaint, made on XXXXXX XX, XXXX, that she was subjected to a racially hostile environment. The complainant stated that during a class on XXXXXXXX XX, XXXX, a classmate used the word “nigger.” The complainant informed OCR that she complained about the incident in an electronic mail (email) message to the Dean of the School of Professional Studies (the Dean) on XXXXXXXX XX, XXXX, but never received a response.

OCR determined that CUNY’s system-wide Policy on Equal Opportunity and Non-Discrimination (the Policy) prohibits discrimination or harassment on the basis of race, color, and national origin, among other protected bases. OCR determined that the College uses the Policy, which expresses a commitment to addressing discrimination and retaliation complaints promptly, consistently and fairly. The Policy states that members of the College community may raise concerns of discrimination or harassment to the Chief Diversity Officer, with or without filing a complaint. In addition to complaints directly addressed to the Chief Diversity Officer, the Policy requires that each president, vice president, dean, director, or other person with managerial responsibility, including department chairpersons and executive officers, must promptly consult with the Chief Diversity Officer if he or she becomes aware of conduct or allegations of conduct that may violate the Policy.

Once the Chief Diversity Officer is made aware of a concern, either by a complainant or a responsible administrator, the Chief Diversity Officer will meet with the complainant and inform him or her of the options available, including seeking an informal resolution or the College conducting a full investigation. If a complainant wishes to file a formal complaint, the Chief Diversity Officer will provide a complaint form which the complainant should use to submit a written complaint. The investigation will consist of the Chief Diversity Officer’s interviewing the complainant and respondent, and allowing each party to provide the names of any possible witnesses. The Chief Diversity Officer should also determine whether any other individuals have relevant information regarding the events in question, and speak with them; and should also review documentary evidence that may be relevant to the complaint. The Policy states that investigations should be completed within 60 days of the receipt of the complaint. The Chief Diversity Officer must report his or her findings to the College President, and if either party to the complaint is a student, the Chief Diversity Officer must also report the findings to the Chief Student Affairs Officer. The President will review the investigation report, and “when warranted by the facts, authorize such action as he or she deems necessary to properly correct the effects of or to prevent further harm to an affected party or others similarly situated.” Both parties are to be notified in writing of the outcome of the complaint investigation and the action, if any, taken as a result of the complaint.

The College asserted to OCR that prior to the receipt of OCR's letter, dated November 9, 2016, informing the College of the instant OCR complaint, the College was not aware that the complainant had complained to the Dean of racial harassment; however, the College stated that after the College's receipt of the letter from OCR, the College's Information Technology Department searched the Dean's emails and located an unopened email from the complainant, dated XXXXXXXX XX, XXXX, in which the complainant stated that she had witnessed a classmate use the "n" word in his conversation with two other classmates. The College asserted that the Dean did not see the complainant's email of XXXXXXXX XX, XXXX, at the time that she sent it, due to the large number of emails he receives each day; and, stated that it was simply an administrative oversight. The College asserted that had the Dean been aware of the complainant's email, he would have responded accordingly. The College asserted that the complainant met with the Dean on subsequent occasions and did not mention the unanswered email.

A recipient is required to take prompt and effective action that is reasonably calculated to stop harassment, prevent its recurrence, and as appropriate, remedy its effects, if the recipient had notice of the harassment and the harassment was sufficiently serious to rise to the level of a hostile environment. OCR determined that as of the complainant's email to the Dean, dated XXXXXXXX XX, XXXX, the College should have known of the complainant's allegation of racial harassment. Pursuant to the Policy, the Dean is a "person with managerial responsibility" who is required, pursuant the Policy, to report racially harassing conduct or allegations of such conduct to the Chief Diversity Officer. Thus, the complainant's email to the Dean constituted constructive notice of alleged racial harassment.

Prior to the completion of OCR's investigation of this matter, the College advised OCR that it wished to voluntarily resolve the complaint without further investigation by OCR. In lieu of OCR completing the investigation, on May 8, 2017, the College signed the enclosed 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 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 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Eric Bueide, Senior Attorney, at (646) 428-3851 or eric.bueide@ed.gov; or Crystal Johnson, Senior Investigator, at (646) 428-3821 or crystal.johnson@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: XXXXXX XXXXX, Esq.