

October 26, 2018

Vita C. Rabinowitz, Ph.D.
Interim Chancellor
City University of New York
205 East 42nd Street
New York, New York 10017

Re: Case No. 02-18-2231
City University of New York, Queens College

Dear Dr. Rabinowitz:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the City University of New York (CUNY), Queens College (the College). The complainant alleged that the College discriminated against him, on the basis of sex, by failing to respond appropriately to reports of sexual misconduct made against him during the fall 2017 semester (Allegation 1). The complainant also alleged that the College discriminated against him, on the basis of XXXXXXXX disability, by assigning him a failing grade in his XXXXXXXX course on XXXXXXXX, 2017 (Allegation 2).

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). OCR also is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department. Additionally, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College is a recipient of financial assistance from the Department and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX, Section 504, and the ADA.

During the course of the investigation, OCR reviewed documentation that the complainant and the College submitted. OCR also interviewed the complainant. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the College discriminated against him, on the basis of sex, by failing to respond appropriately to reports of sexual misconduct made against him during the fall 2017 semester. The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that 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 program or activity operated by a recipient.

Designation and Notice of Title IX Coordinator

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including any investigation of any complaint communicated to the recipient alleging any actions that would be prohibited by the regulation implementing Title IX. It also requires each recipient to notify all of its students and employees of the name, office address, and telephone number of the employee or employees so designated.

OCR determined that the College has designated a Title IX coordinator. The Title IX coordinator has overall responsibility for implementing the College's Policy on Sexual Misconduct, including overseeing the investigation of complaints alleging any actions that would be prohibited by the regulation implementing Title IX at the College. The College's staff directory for the Office of Compliance and Diversity Programs on the College's website lists the Title IX coordinator's name, title, campus building location, telephone number and electronic mail (email) address.¹ This information is also available on the College's webpage listing its nondiscrimination statement;² and its Title IX webpage, except that this page lacks the Title IX coordinator's campus building location.³ OCR determined that the College publishes the Title IX coordinator's name, title, campus building location, telephone number and email address in its Faculty Handbook,⁴ and New Student Guide;⁵ however, this information is not included in the College's Grad Student Handbook.⁶

¹ <https://www.qc.cuny.edu/about/administration/AffirmativeAction/Pages/Staff%20Directory.aspx> (last visited September 19, 2018).

² <https://www.qc.cuny.edu/Academics/Degrees/DAH/LCD/Pages/NondiscriminationPolicy.aspx> (last visited September 19, 2018).

³ http://www1.cuny.edu/sites/title-ix/?post_type=campus_profile&p=154 (last visited September 19, 2018).

⁴ http://www.qc.cuny.edu/about/administration/provost/facultystaff/documents/qc%20fac%20handbook12_22_11.pdf (last visited September 19, 2018).

⁵ https://www.qc.cuny.edu/StudentLife/services/NewStudent/Documents/New%20Student%20Guide_2016-2017.pdf (last visited September 19, 2018).

⁶ <http://www.qc.cuny.edu/admissions/graduate/documents/Elec-Grad%20Handbook2.pdf> (last visited September 19, 2018).

Based on the foregoing, OCR determined that the College has designated a Title IX coordinator, but has not effectively and consistently notified all students, employees and third parties of the name, title, campus building location, telephone number and email address of the Title IX coordinator, as required by the regulation implementing Title IX at 34 C.F.R. § 106.8(a).

Notice of Nondiscrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, 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 educational program or activity which it operates, and that it is required by Title IX not to discriminate in such a manner. Such notification shall state, at a minimum, that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to OCR's Assistant Secretary. Section 106.9(b) requires each recipient to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form which it makes available to the types of persons described in § 106.9(a), or which is otherwise used in connection with the recruitment of students or employees.

The College's notice of nondiscrimination is available on its website.⁷ The notice states that the College does not discriminate in its programs and activities on the basis of "age, sex, sexual orientation, alienage or citizenship, religion, race, color, national or ethnic origin, disability, or veteran or marital status." It further states that staff or student questions or complaints should be referred to the Title IX coordinator. The requisite contact information for the Title IX coordinator is included with this statement; however, the person named as Title IX coordinator and the contact information differs from the information published elsewhere on the College's website. The notice of nondiscrimination does not state that inquiries concerning the application of Title IX may also be referred to OCR. The notice of nondiscrimination does not appear in other published materials, such as the Grad Student Handbook, the New Student Handbook, or the Faculty Handbook.

Based on the foregoing, OCR determined that the College has published a nondiscrimination notice on its website, stating that it does not discriminate on the basis of sex (and other bases). Although the notice of nondiscrimination states that inquiries can be made to the Title IX coordinator, it does not state that inquiries can also be made to OCR, and is not included in certain essential published materials, as required by the regulation implementing Title IX at 34 C.F.R. § 106.9.

⁷ <https://www.qc.cuny.edu/Academics/Degrees/DAH/LCD/Pages/NondiscriminationPolicy.aspx> (last visited September 19, 2018).

Grievance Procedures

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. On October 31, 2016, OCR resolved a complaint against CUNY Hunter College (OCR Case No. 02-13-2052), in which the CUNY system agreed to revise its grievance procedures to ensure that these complied with the regulation implementing Title IX, at 34 C.F.R. § 106.8(b). The College confirmed to OCR that it has adopted the CUNY system grievance procedures developed in response to OCR Case No. 02-13-2052; and, OCR is currently reviewing those procedures in the monitoring of the resolution agreement obtained in OCR Case No. 02-13-2052, to ensure compliance with 34 C.F.R. § 106.8(b).

Response to Reports of Sexual Misconduct Made Against the Complainant

The complainant stated that in XXXXXXXX 2017, he was contacted by an official in the College's Student Affairs Office (administrator 1), who advised him that he was required to meet with her. The complainant stated that at their meeting on XXXXXXXX, 2017, administrator 1 informed the complainant that he had been accused of inappropriate touching and stalking by three members of his XXXXXXXX (the program) and that there would be a departmental investigation. The complainant stated that on XXXXXXXX, 2017, he met with three administrators in the program (administrators 2, 3 and 4), who told him that the allegations against him were serious; and although he could continue attending classes, he was prohibited from speaking with any other students at the College, including students in other programs, except during class discussions.

The complainant stated that on XXXXXXXX, 2017, he met with two faculty members in the program (faculty members 1 and 2), who told him that he was being dismissed for violating a no contact order by contacting a work colleague of his at CUNY York College, who was also a student at the College, after administrator 4 had instructed him not to contact other students. According to the complainant, faculty members 1 and 2 advised him that he could withdraw as an alternative to dismissal, which would allow him to apply to another program at the College. The complainant stated that he was not allowed to leave the room and elected to withdraw because he did not think he could prevail on appeal of a dismissal. The complainant stated that he did not receive anything in writing regarding his dismissal during this meeting, was never informed of the names of the students who had alleged inappropriate touching and stalking, nor was he given any other information about the allegations. He stated that in XXXXXXXX 2018, he obtained a copy of the dismissal letter from administrator 1, which only described two instances in which he demonstrated poor judgment in the field, including asking a question of a peer at CUNY York College. The complainant asserted that the College's move to dismiss him was discriminatory on the basis of sex, because the College did not appropriately investigate the allegations against him, as the Title IX office had no role in the process; and, the College levied an inappropriate no contact order and forced him to withdraw without due process. The complainant stated that he was dismissed just two weeks after the allegations were made against him, without being provided any times or dates of inappropriate conduct.

The College advised OCR that it had received complaints about the complainant prior to his dismissal. The College stated that four College students (students A, B, C and D) met as a group with a professor and reported concerns about the complainant's behavior. The College advised OCR that, among other things, student A reported that the complainant had expressed romantic interest in student A, and continued contacting student A and making inappropriate comments of a sexual nature after student A had rejected the complainant's advances. The College advised OCR that student D reported that the complainant had accessed personal information on student D's laptop without permission, and followed student D around campus. The College advised OCR that students A, B, C and D further reported that the complainant had XXXXXXXX. The College advised OCR that all four students reported feeling nervous and unsafe around the complainant; however, they all stated that they did not want their names to be disclosed and did not want the College to conduct an investigation. The College stated that the professor notified the administration of the students' reports. Thereafter, department officials met with the complainant and "informed [him] that he should refrain from contacting, outside of the classroom, the other students in the class." The College stated this was not a formal no contact directive. The College did not provide any further information regarding the complainant's leaving the College.

Failing Grade Issued to Complainant

With respect to Allegation 2, the complainant alleged that the College discriminated against him, on the basis of XXXXXXXX disability, by assigning him a failing grade in his XXXXXXXX course on XXXXXXXX, 2017. The complainant asserted that he completed all assignments in this course, but the professor failed him, despite the professor's informing him that he was "doing fine" in the class on XXXXXXXX, 2017. The complainant stated that the professor told him during the course that the complainant had some "childhood issues"; and because of the complainant's demeanor, the professor would keep a close eye on him. The complainant further stated that the professor XXXXXXXX. He stated that in one instance, the professor suggested that one of the complainant's "multiple personalities" wrote one of his assignments. The complainant stated that he received no explanation for the failing grade. He stated that he submitted an appeal of the failing grade that was resolved in his favor on XXXXXXXX, 2018; and, his grade was changed to C. The complainant stated that he does not accept the grade of C, and believes his grade should be a B or better.

The regulation implementing Section 504, at 34 C.F.R. § 104.43(a), states that no qualified disabled student shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic or other postsecondary education program or activity. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j), defines a disabled person as a person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an

impairment. The regulation implementing the ADA, at 28 C.F.R. § 35.104, contains a similar definition.

The College stated that the professor assigned the complainant a failing grade for the course because he believed that the complainant had plagiarized an essay assignment. The College stated that because the professor had not followed the College's procedures for addressing plagiarism, the complainant's failing grade for the course was removed, and his grade was recalculated, which resulted in a final grade of C. Information the College provided indicated that there were 29 students in the course. Of these, 27 received a final grade of A- or better; 1 received a final grade of B; and, the complainant received a final grade of C. The College stated that the Student was the only student with a disability in the course XXXXXXXX.

Prior to OCR's completing the investigation of Allegations 1 and 2, on October 24, 2018, the College signed the enclosed agreement to resolve these allegations without further investigation. The resolution agreement also includes action items to address the compliance issues that OCR identified with respect to the designation and notice of the Title IX Coordinator and notice of nondiscrimination. OCR will monitor the implementation of the resolution agreement. If the College fails to comply with the terms of the resolution agreement, OCR will resume its investigation. Upon the College's satisfaction of the commitments made under the Agreement, OCR will close the case.

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 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, 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 regarding OCR's determination, please contact David Krieger, Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; or Andy Artz, Compliance Team Attorney, at (646) 428-3901 or alexander.artz@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Bridget Barbera, Esq.
Glenda G. Grace, Esq.
Judith L. Massis-Sanchez, Esq.