



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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October 4, 2019

Marion A. Terenzio, Ph.D.
President
State University of New York
College of Agriculture and Technology at Cobleskill
106 Suffolk Circle
Cobleskill, New York 12043

Re: Case No. 02-19-2160
State University of New York-College of Agriculture and Technology at Cobleskill

Dear President Terenzio:

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 State University of New York-College of Agriculture and Technology at Cobleskill (the College). The complainant alleged that the College discriminated on the bases of race/national origin and sex, by failing to respond appropriately to reports she made (a) on December 20, 2018, to the Executive Director of international education (the executive director); (b) on December 27, 2018, to the Dean of the Schools of Business and Liberal Arts and Sciences (the dean); and, (c) on January 30, 2019, to the College President (the president), in which she alleged that the professor for Biology XXX (course 1) and Biology XXX (course 2) treated Chinese and female students differently in the manner in which she graded them, and subjected Chinese and female students to harassment.

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). OCR is also 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 Department. The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI and Title IX.

The regulation implementing Title VI, at 34 C.F.R. §100.3(a), provides that no person shall, on the basis 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 operated by a recipient. Further, the regulation, at 34 C.F.R. §100.3(b)(1)(iii), states that a recipient may not, on the basis of race, color, or national origin, subject an individual to different treatment in any matter related to his

receipt of any service or other benefit under the program. Additionally, harassment based on race/national origin 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 so as 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. In determining whether the responsive action was reasonable, OCR will consider, among other things, whether the responsive action was consistent with any established institutional policies.

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. The regulation, at 34 C.F.R. § 106.31(b)(2), states that a recipient shall not, on the basis of sex, provide different services or benefits or provide services or benefits in a different manner. Harassment based on sex is prohibited different treatment, and can include verbal, nonverbal, or physical conduct. In addition, 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.

When similarly situated students of different races, national origins or sexes are treated differently, discrimination can be a reasonable explanation for the different treatment. Intentional discrimination can take many forms, however, and can be proven even without the existence of a similarly situated student. For instance, OCR examines whether the recipient treats students in a manner that is inconsistent with its established policies, practices and procedures or whether any other evidence of discrimination based on race, national origin, or sex exists. OCR generally asks the following questions to determine whether different treatment has occurred:

1. Did the recipient treat a student or group of students differently from a similarly situated student or group of students of another race, national origin, or sex, and thereby limit or deny the student(s) educational services, benefits, or opportunities?
2. Did the recipient have any legitimate, non-discriminatory reason for its actions?
3. Was the reason given a pretext for unlawful discrimination?

In its investigation, OCR reviewed documents and information submitted by the complainant, the College, and student witnesses. OCR also interviewed College staff. OCR made the following determinations.

OCR determined that the College's policies and procedures governing the investigation of complaints of discrimination on the basis of race/national origin and sex for academic year 2018-2019 are set forth in the College's grievance procedures, known as the "SUNY-Wide Discrimination Complaint Procedure" (the procedure). OCR determined that the procedure governs the College's process for responding to allegations of unlawful discrimination on the basis

of race, national origin, and sex, among other bases.¹ The procedure defines harassment as a form of unlawful discrimination on the basis of the above-referenced protected categories. OCR also determined that the procedure applies to complaints alleging discrimination or harassment filed by any student or employee of the College, as well as third parties who are participating in a College sponsored program or affiliated activity. The procedure provides the name and contact information of the College's Affirmative Action Officer/Title IX Coordinator (AAO refers to both) who is designated to accept complaints of discrimination and refer them for investigation by the Office of General Counsel.² OCR determined that the procedure is easily located and widely distributed as it is posted on the College's website.³

OCR further determined that the College offers both informal and formal resolution processes and the procedure applies to both processes. The procedure further states that any student or employee, or any third party, may consult with the AAO regarding potential discrimination or harassment by telephone, email, or in person (the latter being preferred).⁴ The procedure also states that although in limited circumstances oral complaints may be acted upon, the College prefers written complaints. The procedure further states that all complaints must be submitted on the Charge of Discrimination form to initiate a complaint under the informal procedure, and the conversion of the complaint to the formal procedure; and, that the AAO is available to assist in preparing the complaint. The procedure states that students must file a complaint within 180 calendar days following the alleged discriminatory act, or 90 calendar days after a final grade is received, for the semester during which the discriminatory acts occurred, if that date is later. If a resolution satisfactory to both the complainant and the respondent is reached within 24 calendar days from the filing of a complaint under the informal resolution process, the AAO shall close the case, sending a written notice to that effect to the complainant and respondent; however, the procedures state that if the AAO is unable to resolve the complaint to the mutual satisfaction of both parties under the informal resolution process, the AAO shall notify the complainant and advise the complainant of their right to proceed to the next step internally, and/or the right to separately file with appropriate external enforcement agencies.⁵ The procedure indicates that the formal complaint proceeding is commenced by the filing of a complaint form as described above. The procedure states that the complaint, together with a statement from the AAO indicating that informal resolution was not possible, if applicable, shall be forwarded to the chairperson of the campus affirmative action committee (chairperson) within seven calendar days from the filing of the formal complaint; the AAO will forward the complaint only if an informal resolution was not

¹ The procedure also prohibits discrimination based on religion, creed, age, sexual orientation, disability, gender identity, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, and/or criminal conviction.

² The procedure states that the AAO on each University campus and the AAO for the SUNY System Office, who receives any complaint of alleged discrimination, shall inform the complaining individual about the complaint process and other options to resolve the issue, assist the complaining individual in the use of the complaint form and understanding the nature of the incident, and provide the complaining individual with information about various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

³ <https://cobleskill.edu/titleix/pdf/Discrimination-Complaint-Procedure-Cobleskill.pdf> (Site last visited October 3, 2019).

⁴ Additionally, the procedure states that in seeking an informal resolution, the AAO shall attempt to review all relevant information, interview pertinent witnesses, and bring together the complainant and the respondent, if desirable.

⁵ The procedure indicates that the complainant may elect to end the informal resolution process, and proceed to the formal resolution process, at any time after the Charge of Discrimination form is filed.

pursued. Upon receipt of a complaint, the procedure also states that the AAO will provide an initialed, signed, date-stamped copy of the complaint to both parties; and, within seven calendar days of receipt of the complaint, the chairperson shall send notification to the complainant, the respondent, and the College President (president) that a review of the matter shall take place by a tripartite panel (the panel) to be selected by the parties from a pre-selected pool of eligible participants.⁶ The procedure further states that the panel shall review all relevant information, interview pertinent witnesses, and, at their discretion, hear testimony from the parties, if desirable; and, that the parties shall be entitled to submit written statements and/or other relevant material evidence and witnesses, and provide rebuttal to the written record compiled by the panel. Within 15 calendar days from the completion of selection of the panel, the chairperson of the panel shall submit a summary of its findings, and the panel's recommendation(s) for further action to the president. When the panel transmits the summary of its findings and the panel's recommendations to the president, the panel will also send, concurrently, copies of both the summary of its findings and recommendation(s) to the parties and the AAO. The procedure additionally states that within 10 calendar days of receipt of the written summary, the president or designee shall issue a written statement to the parties, indicating what action the president proposes to take; and, that no later than 7 calendar days following issuance of the statement by the president, or the Chancellor in instances where the president is the respondent, the AAO shall issue a letter to both parties advising them that the matter is closed. Further, the procedure states that retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner is prohibited and may result in disciplinary action.

OCR determined that the complainant first enrolled as an international student at the College during the fall XXXX semester within the College's dual degree in biotechnology bachelors program (program), in partnership with the Jinling Institute of Technology (JIT) in China.⁷ After completing her initial coursework at JIT, the complainant began attending the College in August XXXX, to complete three remaining semesters in the program. After the complainant took course 1 with the professor at the XXX campus in XXXXX during the summer XXXX semester and did not pass the course, she re-enrolled in course 1 at the College with the professor during the spring 2018 semester; and, she earned a grade of C. The complainant subsequently enrolled in course 2 with the professor during the fall 2018 semester and received a final grade of 67.17, which is a D+. OCR determined that the College requires students to receive a passing grade of at least 72.1, which is a C, in any course that is required for a major. Therefore, the complainant would have been required to re-enroll in course 2; however, the complainant was unable to return to the College to retake course 2. As a result, in January XXXX, the complainant decided to complete her degree in China without obtaining the degree offered by the College.

The complainant alleged that the College discriminated on the bases of race/national origin and sex, by failing to respond appropriately to reports she made (a) on December 20, 2018, to the executive director (complaint 1); (b) on December 27, 2018, to dean (complaint 2); and, (c) on

⁶ The panel shall consist of one member of the pre-selected pool chosen by the complainant, one member chosen by the respondent, and a third chosen by the other two designees; the panel members shall choose a chair among themselves; and, selection must be completed, and written notification of designees submitted, to the chairperson no later than seven calendar days after the complainant, the respondent, and the president received notice.

⁷ International students who enroll in this dual diploma program complete their initial undergraduate coursework at JIT, then transfer to SUNY Cobleskill for their remaining time of study. Upon completion, students receive bachelors' degrees from both the College and JIT.

January 30, 2019, to the president (complaint 3), in which she alleged that the professor for course 1 and course 2 treated Chinese and female students differently in the manner in which she graded them, and subjected Chinese and female students to harassment.

Complaint 1

OCR determined that by email to the executive director on December 24, 2018, the complainant asked how to “report a professor.” The executive director responded to this email to request additional information; and in a follow-up email sent the same day, the complainant stated, “I mean my professor was unfair and racist. So I have to let the school faculty know that and at least do something.” OCR determined that the executive director responded by email the same day stating, “You can request a meeting with the dean. What course are you referring to? That will determine which dean you should speak to. You need to have evidence to support your claim. You can write an email first and then request a meeting.” The complainant responded by email the following day, naming the course and giving the executive director some general information about her concerns regarding the professor, but did not refer to any specific incidents.⁸

The executive director informed OCR that after receiving the email from the complainant on December 25, 2018, she referred the complainant to the dean because she did not believe that the complainant was actually raising an allegation of discrimination; rather, she believed that the complainant wanted her grade in course 2 changed, and the dean would have been responsible for reviewing a grade appeal.⁹ Moreover, the executive director informed OCR that based on the complainant’s emails in December 2018, she believed that the complainant was “manufacturing an issue” in an attempt to get her grade changed.¹⁰ Nevertheless, OCR determined that after receiving the complainant’s email dated December 25, 2018, the executive director sent an email to the dean on December 27, 2018, informing him that the professor had previously contacted her about a “JIT student” who did not succeed in course 2, and that the complainant would likely contact the dean.

Thereafter, the complainant sent an email to the executive director, dated January 3, 2019, stating that one of her classmates (student A) had similar concerns regarding the professor during the spring and fall 2018 semesters, and that she also planned to contact the executive director and the dean. In response, the executive director sent an email to the complainant, dated January 4, 2019, in which she confirmed that she sent an email to the dean on December 27, 2018, and that the dean would speak with the College’s provost “about the situation” because “it is important that all

⁸ In her email dated December 25, 2018, the complainant informed the executive director: “Actually, last semester some of my classmates reported the instructor also. And my classmate had evidence, but this semester same thing happened. I really want to know when the school faculty will pay attention to students’ feelings. As an international student, I didn’t feel any fair or freedom, only insult and racist.”

⁹ The executive director informed OCR, “this was clearly an issue of grading.” Additionally, she asserted that the complainant had never reported any concerns about the professor before complaint 1; therefore, she assumed the complainant’s decision to file a complaint was motivated by her grade in course 2.

¹⁰ The executive director stated that she works very closely with six Chinese professors at the College’s partner university in China and leads the delegations when they come to the College. According to the executive director, Chinese professors have told her that when students and parents in China complain about an instructor to administrators in the institution, the institution will allow grade changes in order to prevent complaints being forwarded to the Chinese Ministry of Education.

students be treated fairly.” OCR determined that the executive director did not further investigate the concerns the complainant raised in complaint 1.

The College asserted that the complainant did not file complaint 1 in accordance with the College’s discrimination complaint procedure, as described above. In addition, the College stated that the complainant did not contact the College’s Director of Human Resources and Affirmative Action (HR director) to report possible discrimination. The College further stated that because the complainant’s concerns ultimately were perceived to be related to her grade in course 2, College staff suggested that she follow the College’s Grade Appeal process.¹¹

Based on the foregoing, OCR determined that the complainant filed a complaint with the executive director on December 24, 2018, in which she alleged that the professor was a “racist.” The complainant did not allege discrimination on the basis of sex in this complaint, nor did she provide any details to support her general assertion that the professor was a “racist.” OCR determined that the complainant did not follow the University’s procedure for filing complaints of discrimination. OCR determined that the executive director advised the complainant to contact the dean; notified the dean that the complainant might be contacting him; and, took no further action regarding complaint 1.

Complaint 2

OCR determined that, following the executive director’s suggestion, the complainant sent an email to the dean, dated December 27, 2018, in which she reported that the professor was “unfair and racist”; and, provided the dean with three attachments in support of her allegations. OCR reviewed copies of the three attachments that the complainant submitted by email to the dean.

In attachment 1, the complainant asserted that the professor had discriminated on the bases of race/national origin, and/or sex by unfairly grading her classwork and the classwork of other Chinese students and/or female students. The complainant also included a narrative description of two instances during courses 1 and 2 in which the professor allegedly subjected her and other Chinese and/or female students to a hostile environment. Specifically, the complainant asserted that the professor harassed Chinese and/or female students by disclosing to other students the grades that the complainant and other Chinese students enrolled in course 1 received on the mid-term exams, but did not share information about the grades that American students received on their mid-term exams (incident 1); and, frequently speaking XXXXXXXXX to international students in front of English-speaking students (incident 2).

Attachment 2 contained a classmate’s (student B’s) firsthand account of her experiences with the professor, which the complainant asserted that student B had initially reported to the Provost for Academic Affairs (provost) in April 2018, alleging that the professor engaged in race/national origin discrimination against other Chinese students and/or sex discrimination against other female students. Specifically, in attachment 2, student B, who is XXXXXXXXXXXXXXXXXXXX, asserted that during class, the professor stated to her, “you are better than the JIT [Jinling Institute of Technology] students” (incident 3); refused to assist Chinese students, including providing

¹¹ The College informed OCR that the complainant was not timely in following the College’s grade appeal process; and as a result, her appeal was denied on February 19, 2019.

assistance regarding the use of laboratory equipment (incident 4); and, did not equally assign responsibilities for handling laboratory equipment among students enrolled in course 1 during class (e.g., assembling/disassembling laboratory equipment, cleaning up laboratory equipment) (incident 5).

Attachment 3, which student B originally submitted to the provost in April 2018 in support of incidents 1-5, included several links to “YouTube” videos documenting the professor’s behaviors. This included a video in which the professor can be heard speaking with two international students in XXXXXXXX during lab, which student B submitted in support of incident 2.

OCR determined that on January 10, 2019, the dean sent an email to the complainant stating that he had met with the HR director to discuss her “complaints” about the professor. He further stated that the information the complainant had reported in attachments 1, 2, and 3 related to incidents prior to the fall 2018 semester; and, that “those concerns had already been addressed.”¹² The dean advised OCR that he thought these issues had been addressed because he was told by the HR director that the provost had previously “addressed” these allegations. Based on the HR director’s comment, he thought that the provost had already disciplined the professor. The dean later found out that was not true.

In the email sent on January 10, 2019, the dean asked the complainant whether she had any other complaints, issues, problems, or names of other students “who feel the same way” from the fall 2018 semester. The complainant responded to the dean via an email, dated January 13, 2019, in which she stated that she did have “other concerns in fall 2018”; and, she requested that all of her work from course 2 be rescored and compared to the grades of students who took the same course in fall 2017.

The College stated that because the complainant had alleged bias in grading, in January 2019, the dean and the HR director conducted an internal review of the final grades of all students enrolled in courses 1 and 2 to determine if the grades the professor awarded reflected bias based on race/national origin and/or sex. The dean and HR director stated that they met in January 2019 to review the grades the professor had issued to the complainant and other students in the courses, and to compare them with the grades students had received in the same classes during prior years. The dean and HR director stated that they did not review the individual grades that the students received for each assignment in the course; rather, they reviewed the student’s overall final grades, and their race and sex, to confirm whether there was any discernible difference in grading based on these factors.¹³ The dean stated that he also reviewed the information that the complainant had submitted; namely, attachments 1-3, including the videos of the professor during course 1. The HR director stated that she did not contact the complainant, students A or B, or any other student who had been enrolled in courses 1 and 2, because the focus of the complainant’s email was always

¹² OCR determined that in the dean’s email to the complainant, he specifically stated, “In reviewing your materials, we noticed that everything you sent was from previous year or before, not the Fall 2018 semester. Those concerns had already been addressed with the instructor by the Provost, and therefore we cannot address them again.”

¹³ The HR director stated she and the dean did not obtain information regarding the individual grades that students received for classwork, exams, quizzes etc. because grades “are in the purview of the professor” and she and the dean were not prepared to evaluate the curriculum, pedagogy, and examination questions for a XXXXXXXXXXXXXXXX course; therefore, they deferred to the professor’s professional decision-making in grading.

on changing the grade, not on discrimination.¹⁴ The HR director stated that they identified an even grade distribution between Chinese and American students, and male and female students; therefore, they concluded that there was no “obvious sign of discrimination in the awarding of grades.”

On January 18, 2019, the dean sent an email to the complainant, stating that he had met with the professor to review how the complainant’s grades were calculated in course 2; and, that the professor was unwilling to change the complainant’s final grade of D+ and/or allow the grade to serve as a passing grade for course 2. In his email, the dean also stated that he had reviewed the grades of other students in course 2 and “saw no discernable bias or favoritism.” The College stated that as a result of the dean and HR director’s review of the students’ final grades, the College concluded that no discrimination had occurred, and no further investigation was warranted. The College asserted that the provost, nevertheless, met with the professor on February 12, 2019, to provide her with feedback regarding perceptions that some Chinese students had about her “teaching style.” OCR could not confirm that the provost met with the professor on that date.¹⁵

The College asserted that the complainant did not file complaint 2 in accordance with the College’s discrimination complaint procedure, as described above; and, that the complainant did not contact the HR director to report possible discrimination. The College stated that because the complainant had expressed concerns regarding the grade that the professor had assigned to her for course 2, the dean processed complaint 2 as a grade appeal.

Based on the foregoing, OCR determined that the complainant filed a complaint with the dean on December 27, 2018, in which she alleged that the professor was a “racist”; and, provided three attachments in support of her allegation. In one of the attachments, the complainant alleged that the professor subjected Chinese and/or female students to different treatment in grading and subjected them to harassment, on the bases of their race/national origin and/or sex. Two of the attachments contained allegations from a different student (student B) alleging that the professor subjected Chinese and/or female students to different treatment and subjected them to harassment, on the bases of their race/national origin and/or sex. OCR determined that the complainant did not follow the University’s procedure for filing complaints of discrimination. Nevertheless, OCR determined that the dean and the HR director conducted a cursory investigation of the

¹⁴ The HR director stated that she believed that the complainant’s complaint was “triggered” after grades for the fall 2018 semester were posted, but that she and the dean conducted a preliminary review in January 2019 to determine if there were grounds for a charge of discrimination. The HR director further stated that the professor is the XXXX faculty member of XXX and is also XX XXXXXXXX XXXXXXXX; however, she “has seen discrimination by [individuals XXXXXXXX] the same XXXXXXXX XXXXXXXX though so [she] didn’t rule it out.” The HR director further asserted that the dean had asked the complainant to provide any witnesses to any alleged incidents of discrimination from the fall 2018 semester, but that the complainant did not respond to this request.

¹⁵ Rather, the provost confirmed a meeting with the professor on August 28, 2018, in connection with student B’s complaint filed in April 2018, wherein they discussed student B’s concerns, and the videos that she had provided of the professor. The provost described the professor as “troubled by this” as she was not aware that she was perceived by students this way; and, that the professor, XXX XX XXXX XXXXXXXX, believed that she was helpful and supportive of Chinese students. Although the College asserted that the provost met with the professor on February 12, 2019, the provost informed OCR that she could not recall details from her meeting with the professor; and, the professor denied meeting with the provost in February 2019 in connection with the complainant’s complaints. In addition, the provost confirmed that the professor was in no way disciplined, and there was no documentation of these meetings.

complainant's allegation regarding different treatment in grading, on the bases of race/national origin and/or sex; concluded that there was insufficient evidence of discrimination to proceed with a more detailed investigation; and, informed the complainant of the outcome of this investigation. The dean advised OCR that he also reviewed attachments 1-3; however, the dean acknowledged that he did not investigate the complainant's other allegations of different treatment and harassment on the bases of race/national origin and/or sex, because he mistakenly believed that the provost had previously investigated these other allegations.

Complaint 3

OCR determined that the complainant sent an email to the president, dated January 30, 2019, with the subject "Complaints about the Instructor," in which she explained that she had already contacted the dean to "rescore" her coursework in course 2, but that the dean had denied her request;¹⁶ and, she again provided attachments 1-3. On or about February 9, 2019, the president responded by email, confirming receipt of the complainant's email and the attached documents; and, stating that she would speak with the dean and provost about the complainant's request.

On or about February 12, 2019, the president sent an email to the complainant stating that she cannot "intervene and overturn an academic decision," but that her role is "to ascertain that the appropriate process (as described in the College catalogue) was followed." The president further stated, "If I have read your email correctly, your first complaint is that you believe you were graded unfairly and your second complaint is that [the dean] said that he cannot re-score your exams. [The dean] is correct. [The dean], as well as you, must abide by the documented processes noted in the College catalogue regarding grade appeals." In a subsequent email to the complainant on or about the same day, the president informed the complainant that she could not speak with the complainant further because it was inappropriate for her to guide the complainant through the grade appeal process. The president further stated that she had completed her review, provided the complainant with her conclusion, and closed the complainant's case file.

OCR determined that the president did not otherwise investigate the complainant's allegations of discrimination. The president stated that she did not believe that the complainant had raised any allegations of discrimination; and, that based on her review of attachments 1-3, she concluded that the documents related to a previous case that was already closed.¹⁷

¹⁶ In her email to the president, the complainant specifically stated, "The thing is I have already contacted the dean for applying [sic] re-score my exams and project. But he said that he cannot do that and there is nothing that he can do. But since I was treated unfairly, I would like to talk with you to see if there is any other help that I can get. Right now my situation is that I only need one more class to graduate, but due to the unfairness, I have to retake the class or finish my class in JIT. I really think it was unfair since I have talked with the dean and [the executive director] but right now the unfairness cannot even be proved." OCR determined that prior to contacting the president, the complainant sent an email to the executive director dated January 23, 2019, in which she asked for the email address of the "headmaster" of the College. She further stated, "It is really ridiculous that I have been treated like that and still have to retake [course 2] with the same instructor." On the same day, the executive director responded and informed the complainant that "re-scoring" exams is not an option as it would violate academic policy; that it was "unfortunate" that she had a "negative experience with one instructor" but that the College must follow both local and state academic protocols; and, that the only option would be for the complainant to retake course 2 during the fall 2019 semester.

¹⁷ The president further stated that other College staff, such as the provost, would have been responsible for reviewing the attachments to determine if they were relevant to the complainant's allegations about the fall 2018 semester.

Based on the foregoing, OCR determined that the complainant filed a complaint with the president on January 30, 2019. With the complaint, the complainant provided attachments 1-3, which contained allegations alleging that the professor subjected Chinese and/or female students to different treatment and subjected them to harassment, on the bases of their race/national origin and/or sex. OCR determined that the complainant did not follow the College’s procedure for filing complaints of discrimination. OCR determined that the president advised the complainant that she could not intervene; and, took no further action regarding complaint 3.

Summary:

OCR determined that the complainant filed complaints of discrimination and harassment, on the bases of race/national origin and/or sex, with the executive director, dean, and president. Although the complainant did not follow the proper procedure for filing complaints of discrimination and harassment, OCR determined that the complainant provided the College with sufficient information to enable the College to respond or proceed with an investigation in accordance with their procedure. OCR determined that at no time did College staff refer the complainant to the College’s grievance procedure, or to the HR director who is charged with receiving complaints and assisting complainants in completing the appropriate forms, pursuant to the College’s procedure.¹⁸ OCR determined that the College’s grievance procedure states, “All complaints must be submitted on the forms provided by the College” and further provides that “in limited circumstances, [oral] complaints may be acted upon” and that the College “prefers written complaints.” OCR determined that the College conducted a cursory investigation of the complainant’s allegation regarding different treatment in grading, on the bases of race/national origin and/or sex; concluded that there was insufficient evidence of discrimination to proceed with a more detailed investigation; and, informed the complainant of the outcome of this investigation. However, the College did not conduct an investigation of the complainant’s other allegations of discrimination and harassment on the bases of race/national origin and/or sex to determine if the College needed to take action to address different treatment or a hostile environment.

Because the College did not investigate complaints 1, 2, or 3, OCR investigated the complainant’s allegations of discrimination and harassment, on the bases of race/national origin and sex, to determine whether the professor treated Chinese and/or female students less favorably, and/or whether the professor subjected the complainant or her Chinese and/or female classmates to a hostile environment.

Different Treatment in Grading:

OCR determined that in the attachments the complainant submitted to the dean via email dated December 27, 2018, she expressed concerns regarding the grades she received during the spring 2018 semester. In her email to the dean dated January 13, 2019, the complainant specifically

¹⁸ The dean informed OCR that he did not advise the complainant to file a complaint using the College’s grievance procedure, and he was not aware of any College staff informing the complainant that she would need to file a discrimination complaint to have her allegations investigated. The HR director also informed OCR that she did not explain the College’s discrimination complaint process to the complainant because the complainant was in China, and her concern was centered upon the grade change.

expressed concerns regarding the grades that she received on her midterm exam, project, final exam, and bonus questions during course 2.

OCR determined that for course 1, a student's grade is calculated based on their performance on three lecture exams (100 points each), and a term project (50 points). In addition, the professor offered bonus points (30 total) to students who completed extra assignments and/or attended seminars that were offered on campus that were relevant to the subject matter of course 1; and, the bonus points were added to the student's total points. The overall grade percentage represents the total points the student earned out of 350, which is used to assign a letter grade according to the grading metric in the College catalog.¹⁹

With respect to course 1, OCR determined that the complainant received the following grades for each component of course 1: exam 1 - 64/100; exam 2 - 60/100; final exam - 68/100; bonus "XXXX XXXXXXXX" - 2; bonus "XXXXXXXXXX & XXXXXXXXXX XXXX" - 2; bonus "XXXX" - 5; bonus "XXXXXXXXXXXX & teaching XXX" - 6; bonus "xxxx xxx XXXXXXXXXXXX" - 2; bonus "XXX XXXXXXXXXXXXXXXX" - 4. OCR reviewed the key the professor used to grade each component and compared it with the grade the professor assigned to the complainant. OCR did not identify any irregularities to suggest that the professor deviated from the answers recorded in the key when grading the complainant's work. In addition, OCR noted that the complainant lost points in the short answer sections of each exam and bonus question she completed; and, that her answers were less thorough than those of other students in the class who received higher grades.²⁰ OCR further determined that the professor assigned the complainant a grade of 40/50 points for her term paper. The professor stated that she deducted ten points from the complainant's term paper because the paper was not well-organized; the complainant included a "XXXXXXXX alignment" rather than a "XXX alignment" as requested; and, the complainant did not document the figures she included in the paper correctly. OCR determined that for course 1, students identified as Asian²¹ received

¹⁹ The grading metric is as follows: 92.1 = A; 89.5-92.0 = A-; 86.9-89.4 = B+; 82.1-86.8 = B; 79.5-82.0 = B-; 76.9-79.4 = C+; 72.1-76.8 = C; 69.5-72.0 = C-; 66.9-69.4 = D+; 59.5-66.8 = D; and, 59.5 = F.

²⁰ Specifically, OCR determined that a white male student (student C) who received an A in course 1 earned a score of 87 on exam 1, an 86 on exam 2, and a 94 on the final exam. OCR noted that each of student C's responses to the short answer sections were more detailed than the complainant's responses. In addition, student C's responses to the bonus "XXXX XXX XXXXXXXXXXXX" and "bonus XXX XXXXXXXXXXXXXXXX" were both more thorough than the complainant's, and he received an additional point and 2 points on the respective assignments. A white female student (student D) who received a B in course 1 earned a score of 73 on exam 1, 66 on exam 2, and an 80 on the final exam. OCR noted that each of her responses to the short answer sections were more detailed than the complainant's responses; and, she included graphics with her explanations. In addition, student D's responses to the bonus "XXX XXXXXXXX" and bonus "XXXX XXX screening" were more thorough than the complainant's, and she received an additional two points on each bonus assignment. Further, OCR determined that a male Chinese student (student E) who received a grade of A- in course 1 earned a score of 81 on exam 1; 80 on exam 2; and 90 on the final exam. OCR noted that each of his responses to the short answer questions were more detailed than the complainant's responses. In addition, student E's responses to the bonus "XXX XXXXXXXX", bonus "XXXXXXXXXX & XXXXXXXXXX XXXX" bonus XXXX XXX XXXXXXXXXXXX" were more thorough than the complainant's, and he received an additional point on each assignment. Student E also received an additional point for attending a seminar that the complainant did not attend.

²¹ This includes Chinese students, as well as students of Asian descent. The College did not maintain records of students' national origin, and OCR could not identify all of the students who were Chinese from the information available.

grades ranging from A to D+; additionally, male and female students received a variety of grades, with female students scoring in both the upper and lower range of grades in course 1.²²

With respect to course 2, according to the syllabus for course 2, a student's grade is calculated based on their performance on two lecture exams (100 points each), and a term project (100 points). In addition, the professor offered bonus points (26 total) to students. The overall grade percentage represents the total points the student earned out of 300, which is used to assign a letter grade according to the grading metric in the College catalog.

OCR determined that the complainant received the following grades for each component of course 2: exam 1 - 49.5/100; final exam - 57/100; term project - 80/100; bonus "XXXXXX XXXX"- 3; bonus quiz taken on 10/2/18 -6.5; bonus "XXX XXXXXXXX & XXXXXXX XXX" - 2; bonus "XXXXXXXXXXXXXXXXXXXX" - 1; bonus "XXXXXXXX" - 1.5; bonus quiz taken on 11/15/18 - 1. OCR reviewed the key the professor used to grade each component and compared it with the grade the professor assigned to the complainant. OCR did not identify any irregularities to suggest that the professor deviated from the answers recorded in the key when grading the complainant's work. In addition, OCR noted that the complainant lost points in the short answer sections of each exam and that the professor made notations indicating that the complainant's answers were incorrect. With respect to the bonus questions, OCR determined that the complainant's answers were less thorough than those of other students in the class who received higher grades.²³ OCR further determined that the professor assigned the complainant a grade of 80/100 points on her term project. The professor stated that she deducted points from the project because some of the information the complainant included in her project was scientifically incorrect, and the stated purpose of the project was incorrect. OCR determined that for course 2, students identified as Asian²⁴ received grades ranging from A to D; additionally, male and female students received a variety of grades, with female students scoring in both the upper and lower range of grades in course 2.²⁵

²² Specifically, one Asian-American female received a grade of A; one white female received a grade of A; one white male received a grade of A; one Asian male received a grade of A-; two white females received grades of B+; one Asian male received a grade of B+; one white female received a grade of C+; one Asian male received a grade of C+; one white female received a grade of C; one Asian male received a grade of C; the complainant received a grade of C; four white males received a grade of C-; a white female and Asian female received grades of D+; one white male and one black female received grades of F; and, one Asian male and one white male withdrew from the course.

²³ Specifically, OCR determined that student E received a grade of A in course 2 and earned a score of 91 on exam 1; an 88 on the term project; and, an 84 on the final exam. In addition, student E's responses to the 10/2/18 bonus quiz and bonus "XXXX XXXXXXXX and XXXXXXX XXX" were more detailed than the complainant's responses; and, he earned an additional 1.5 points and 1 point, respectively. Student E also received two bonus points for seminars the complainant did not attend. Further, OCR determined that an Asian female (student F) received a grade of B in course 2 and earned a score of 82.5 on exam 1; an 80 on the term project; and, 66 on the final exam. In addition, student F's response to the bonus "XXXX XXXXXXXX and XXXXXXX XXX" was more detailed than the complainant's response, and she earned an additional point on the assignment. Student F also received two bonus points for seminars that the complainant did not attend.

²⁴ This includes not only Chinese students but students of Asian descent. The College did not maintain records of students' national origin, and OCR could not identify all of the students who were Chinese from the information available.

²⁵ Specifically, one Asian male received a grade of A; two white females received grades of A; one white female received a grade of A-; one white female received a grade of B+; two Asian males received grades of B; one Asian female received a grade of B; one white male received a grade of B; one white male received a grade of B; one Asian female received a grade of B-; one Asian male and one white male received grades of C+; two Asian males and one

Based on the foregoing, OCR did not find any evidence to indicate that the professor treated the complainant and/or other Chinese or female students less favorably with respect to grading than male students or students of other races/national origin in courses 1 and 2. Further, OCR determined that the professor proffered legitimate, non-discriminatory reasons for assigning the complainant grades of C and D+ for courses 1 and 2, respectively; namely, the professor deducted points for incorrect answers on the exams and bonus questions, and the complainant's term papers lacked required information and/or included incorrect scientific conclusions. OCR did not find evidence to indicate that the proffered reasons were a pretext for discrimination, as the examinations and course work the complainant submitted were well-documented; and the examinations were scored in accordance with the key.

Incidents 1-5

OCR investigated the professor's alleged conduct, described in incidents 1-5, to determine whether the complainant and/or other Chinese or female students were subjected to harassment on the basis of race or sex that created a hostile environment.

With respect to incident 1, the complainant alleged that the professor engaged in race/national origin and/or sex discrimination against the complainant and other Chinese students, by disclosing to other students the grades they received on the mid-term exams in course 1, but did not similarly share information about the grades American students received on their mid-term exams. In support of incident 1, the complainant asserted that when she attempted to discuss her mid-term grade in course 1 with the professor, the professor told her that she should "ask him," referring to another classmate; the complainant asserted that her classmate then reviewed her exam and provided her with the correct answer.²⁶

The College stated that it complies with Family Educational Rights and Privacy Act (FERPA) regulations regarding confidentiality of student records; and, the professor denied that she disclosed any student's grade to another student during the spring 2018 semester. The professor stated that during a class lecture, she displays the answer key for each midterm exam using the overhead projector/white board; and, that all grades are posted online (using Moodle²⁷) where students can access only their individual grades. The professor also stated that once the grades are posted, she encourages all students to come to her office to review and discuss their scores; however, if a student is unable to come to her office hours, she offers times to meet during lab. The professor stated that occasionally several students may come to speak with her at the same time, but she "always hand[s] over the exam to the students one by one and make[s] sure the page is handed out with the grade facing down." The professor additionally stated that she only informs students of the highest, lowest, and average scores on exams to give students "perspective where they are in their progress." In addition, the professor stated that if a couple of students have the same questions about the exam, she would explain the question and answer them at the same time

Asian female received grades of C-; one white female and one white male received grades of C-; one Asian male received a grade of D+; one Asian female and the complainant received grades of D+; one Asian female and one white male received grades of D; and, one white female received a grade of F.

²⁶ The complainant did not identify this student by name.

²⁷ Moodle is an online learning platform that the professor uses to post assignments, communicate with students, and upload grades. See, https://docs.moodle.org/37/en/About_Moodle#Use_any_time.2C_anywhere.2C.

by using the white board. She also stated that if the same question is asked again by another student, she would encourage the students who participated in the previous discussion to explain what they had learned. The professor described this as an example of “peer-to-peer teaching,” which reinforces what the students learned.

OCR found no evidence or witnesses to corroborate the complainant’s account. The professor denied having disclosed any student’s grades; and several student witnesses corroborated the professor’s account.²⁸

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the professor engaged in race/national origin and/or sex discrimination against the complainant and other Chinese students when she disclosed the grades the complainant and other Chinese students enrolled in course 1 received on the mid-term exams to other students, but did not share information about the grades American students received on their mid-term exams. Accordingly, OCR will take no further action with respect to incident 1.

With respect to incident 2, the complainant alleged that the professor discriminated on the basis of race/national origin by frequently speaking XXXXXXXX to XXXXXXXX students during class in front of English-speaking students. In support of incident 2, the complainant asserted that on one occasion when she attempted to discuss with the professor a grade she received on a lab report in course 1, the professor asked her, “What are you writing about, primary school noun explanation?” The complainant asserted that the professor made this comment to her in XXXXXXXX in front of a classmate. The complainant also asserted that on another occasion, the professor spoke with two XXXXXXXX students in XXXXXXXX during a lab for course 1; and, that “this kind of thing happens every day in the lab even though there are American students.”

The professor informed OCR that she teaches all of her lectures and labs in English but will sometimes speak in XXXXXXXX to students in one on one conversations and/or small groups, as it is easier for them to understand the material in their native language. The professor stated that if an English speaker was also present in the small group, she would inform them that she was only explaining the concept in XXXXXXXX to ensure that the XXXXXXXX student(s) understood the information. The professor also stated that no XXXXXXXX students requested that she not speak to them in XXXXXXXX.²⁹ During the course of OCR’s investigation, several students reported that the professor spoke XXXXXXXX during class to XXXXXXXX students to assist them; and, they stated that the professor specifically did so at the request of the students. They further confirmed that when the professor spoke in XXXXXXXX, she subsequently provided an explanation in English.

Based on the foregoing, OCR determined that the professor occasionally spoke to XXXXXXXX students in XXXXXXXX during class; however, the professor proffered a legitimate, non-

²⁸ During the course of its investigation, OCR contacted students enrolled in courses 1 and 2 to obtain information regarding the complainant’s allegation. OCR received information from several students denying that the professor disclosed students’ grades, including that: “I have never heard anything about other students’ grades”; “The professor allowed every student to ask her their own grade after each test. I don’t know if someone can get other’s grade since I have never asked for that.”

²⁹ The professor further stated that because she also XXXXXXXX in XXXXX at XXX during the XXXXXXXX, many of the students from JIT know her and feel comfortable speaking with her in Mandarin outside of the classroom.

discriminatory reason for doing so. Specifically, many of the students in courses 1 and 2 were international students from XXXXX; and at times, they benefitted from having course material explained in XXXXXXXX. OCR did not find evidence to indicate that the proffered reasons were a pretext for discrimination, as several XXXXXXXX students confirmed that the professor spoke to them in XXXXXXXX to assist them, or upon their specific request. Further, OCR determined that the professor would also speak to XXXXXXXX students in English upon request. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the professor discriminated on the bases of race/national origin, by speaking in XXXXXXXX with some XXXXXXXX students. Therefore, OCR will take no further action with respect to incident 2.

With respect to incident 3, the complainant alleged that the professor harassed Chinese students on the basis of race/national origin by stating to student B, "you are better than the JIT students." In support of incident 3, the complainant provided a copy of the narrative statement and an audio recording that student B had previously submitted to the provost on or about April 28, 2018, in which she asserted that the professor made this comment while discussing a lab report in a XXXX biology course during the fall 2017 semester.

The professor denied making such a comment; and several students that OCR contacted as part of its investigation denied hearing the professor make such a comment. Student B asserted that the professor had made this comment. In support of her assertion, she provided to OCR an audio recording purportedly of the professor stating, "you are better than these JIT people...students...their language very [sic] issue." The complainant and student A were not present, but asserted that this was a recording of the professor. OCR determined that the professor made this statement in class, during an individual conversation with student B, who was not a Chinese student. Even taking as true that the professor made the alleged comment, the single comment, made under the circumstances described, was not sufficiently severe, persistent, or pervasive to interfere with or deny the complainant's and/or other Chinese students' participation in or receipt of benefits, services or opportunities in the College's program; therefore, the statement, if made, was not sufficient to constitute a hostile environment on the basis of race/national origin. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the professor discriminated on the bases of race/national origin, by allegedly making a comment that student B was better than JIT students. Therefore, OCR will take no further action regarding incident 3.

With respect to incident 4, the complainant asserted that the professor discriminated against her and other Chinese and female students enrolled in courses 1 and 2, on the basis of their race/national origin and/or sex, by refusing to provide them with assistance during class, including assistance regarding the use of laboratory equipment. In support of incident 4, the complainant provided a list of dates when she asserted that the professor refused to assist her, student A, student B, and other students in course 1. Student B also asserted that the professor was frequently not in the lab when she and other students needed assistance.

The professor denied that she refused to assist any students upon request, including Chinese or female students. The professor stated that during the lecture and lab portions of courses 1 and 2, students learn through experience, including "peer-teaching." The professor stated that she offers

all students opportunities to obtain hands-on experience, including involving them in preparing “XXXXXX XXXXXXXXXX” for experiments, or setting up laboratory equipment, such as the “XXXXXXXXXX system” for XXX XXXXXXXXXXXXXXXXXXXX. The professor stated that prior to beginning a lab, she clearly explains the operation and calculations to all students. The professor stated that students typically volunteer to participate in such tasks; however, she stated that occasionally she will call upon specific students who do not usually volunteer. The professor stated that instructions regarding the use of laboratory equipment are posted in or around the equipment; and, that she presents a video created by the manufacturer of specific equipment that demonstrates how to use the equipment.³⁰ In addition, the professor stated that while students are working in the lab she is always present to assist them. During the course of OCR’s investigation, several students corroborated that the professor provided assistance to all students upon request.³¹

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR determined that the preponderance of the evidence did not support the complainant’s assertion that the professor refused to provide assistance to Chinese and/or female students during class, including assistance regarding the use of laboratory equipment. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the professor discriminated against the complainant and other Chinese and/or female students enrolled in courses 1 and 2, on the basis of their race/national origin and/or sex, by refusing to provide assistance during class, including assistance regarding the use of laboratory equipment. Accordingly, OCR will take no further action with respect to incident 4.

With respect to incident 5, the complainant asserted that the professor discriminated against the complainant and other Chinese and female students enrolled in courses 1 and 2, on the basis of their race/national origin and/or sex, by not equally assigning responsibilities during class with respect to laboratory equipment (e.g., assembling/disassembling laboratory equipment, cleaning up laboratory equipment). In support of incident 5, the complainant asserted that on multiple occasions during the spring 2018 semester, the professor required student B to complete tasks that were previously assigned to a lab technician; and, that the professor required student B to answer other students’ questions about how to use lab equipment. The complainant also provided documentation that student B had previously provided to the College in which she stated: “another student made a remark that [the professor] has a hierarchy of social status a. favorite students; b. rest of the American [sic] students; c. Chinese are the slaves for her experiments.”

The professor denied that she treated Chinese or female students differently with respect to the assignment of lab clean up and equipment operation. The professor stated that the lab equipment is easily operated, usually simply by turning on and off control functions; and, that all students participate in equipment operations after receiving group instruction both in writing and orally. The professor stated that, generally, the last person using the lab equipment is responsible for

³⁰ The College provided to OCR photographs of the equipment with instructions stating how to use it, and a link to the video that the professor presents to her students.

³¹ For example, one student stated, “The professor has provided assistance to every students [sic] who asked for help. For example, when some students asked questions during the class, the professor always gave her or him a complete and suitable answer.” Another student stated, “The professor provided assistance such as explain[ing] some questions in XXXXXXXX, since some of the students can understand better in this way.”

shutting it down, which is common practice in all research laboratories. In addition, the professor stated that she assigns groups of two to four students as the “clean up crew” on a weekly basis; and, that this group is responsible for final cleaning of any equipment or supplies, and for the final check to ensure all instruments are properly shut off. The professor stated that groups are usually assigned depending on their location in the lab (i.e., the first table on the right is responsible the first week, the second table on the right is responsible the second week, etc.). The professor stated that she clearly explains this process to students during their first week of lab, and oral reminders are given during the semester as new groups are assigned. During the course of OCR’s investigation, several students corroborated the professor’s assertions that lab clean up and equipment operation was equally assigned to all students regardless of race/national origin and/or sex.³²

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR determined that the preponderance of the evidence did not support the complainant’s assertion that the professor did not equally assign responsibilities during class with respect to laboratory equipment (e.g., assembling/disassembling laboratory equipment, cleaning up laboratory equipment). Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the professor discriminated against the complainant and other Chinese and female students enrolled in courses 1 and 2, on the basis of their race/national origin and/or sex, by not equally assigning responsibilities during class with respect to laboratory equipment (e.g., assembling/disassembling laboratory equipment, cleaning up laboratory equipment). Accordingly, OCR will take no further action with respect to incident 5.

Based on the foregoing, OCR determined that it could not substantiate the complainant’s allegations that the professor discriminated against her and other Chinese and female classmates, on the bases of their race/national origin and/or sex; however, OCR determined that despite receiving written complaints from the complainant that the professor had allegedly discriminated against her and her classmates, on the bases of their race/national origin and/or sex, the College failed to investigate the complainant’s allegations to determine whether discrimination or harassment occurred. On October 4, 2019, the College signed the enclosed Agreement to remedy the compliance issue identified in this investigation. OCR will monitor the implementation of the Agreement. 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.

³² Specifically, one student stated, “After class, every students [sic] were required to the clean the desk that they used. I believe that the responsibility was assigned to every students [sic] fairly.” Another student stated, “The professor assigned laboratory responsibility to each student equally.”

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.

The complainant has a right to appeal OCR's determinations concerning the complainant's underlying allegations of discrimination and harassment, on the bases of race/national origin and sex, with respect to different treatment in grading, and with respect to incidents 1-5, within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have any questions regarding OCR's determination, please contact Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or jessica.daye@ed.gov; or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Penelope Ploughman, Esq.