



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 28, 2023

IN RESPONSE, PLEASE REFER TO: 03212170

Dr. Jermaine F. Williams
President
Montgomery College
9221 Corporate Blvd., Suite S407
Rockville, MD 20850
Sent via email only: president@montgomerycollege.edu

Dear Dr. Williams:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the complaint against Montgomery College, Takoma Park/Silver Spring campus (the College). The Complainant alleges that the College discriminated against her client (the Student) on the basis of sex by failing to promptly and equitably respond to an [redacted content] complaint of sexual harassment.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 – 1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex under any education program or activity receiving Federal financial assistance.¹ As a recipient of Federal financial assistance from the Department, the College is subject to Title IX and its implementing regulation.

In reaching a determination, OCR reviewed documentation provided by the Complainant and the College and OCR interviewed the Complainant, the Student, the College's former Title IX Director, Title IX Coordinator, and [redacted content] Director. After carefully considering all the information obtained during the investigation, OCR concludes that the College complied with the requirements of Title IX by conducting a prompt and thorough investigation of the incident, offering to meet with all students impacted to conduct interviews and offer supportive services, and notifying the reporting party of the outcome of the incident. However, OCR

¹ Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). However, OCR investigated this complaint based on the prior Title IX regulation that was in effect at the time when the alleged acts occurred. You can find that regulation [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

identified a concern that the College did not provide notice of the outcome of its investigation to all students in the Professor's class who were subjected to harassment.

OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) because OCR identified a concern that can be addressed through a resolution agreement. On June 27, 2023, the College signed a resolution agreement to address the concern OCR identified. Following are the relevant legal standards and the evidence OCR reviewed during the investigation.

FACTUAL SUMMARY

The Student, Student A, Student B, Student C, and 7 additional female students were enrolled in [redacted content] course during the [redacted content] semester. During class on [redacted content], the Professor required all the students to remove their shirts and wear only sports bras in order to conduct [redacted content] demonstrations and assessments. After removing their shirts, [redacted content] put on their lab jackets for modesty purposes, but the Professor demanded that they remove their jackets. The Professor also commented on students' nipples and breast positioning and asked the students to separate their breasts so they could conduct the assessment. The Complainant asserts that after the incident was reported to College staff, the College failed to interview the Student, provide her with information about her rights and options pursuant to Title IX, and provide the Student with notice of the outcome of its investigation.

On [redacted content], Student B reported the [redacted content] incident, as well as an individual incident of sexual harassment by the Professor, to one of her professors. [Redacted sentence]. The professor to whom Student B made her report shared the information with the Chair, the Chair shared it with the [redacted content] Program Director (the Director), and the Director reported it to the former Director of ADA and Title IX Compliance (the Title IX Director). The Professor was placed on paid administrative leave the same day and notified of the allegations and the College's investigation. [Redacted content], the Title IX Coordinator met with Student B about her report.

On [redacted content], Student A emailed the Chair and the Title IX Director, with a copy to all of the students in the class, including the Student, regarding the [redacted content] incident and signed the email as "the Professor's [redacted content] class." Later that day, the Title IX Director replied to the email in which all of the students were copied, stating that the Professor's alleged behavior may be a violation of the College's Sexual Misconduct Policy (the Policy) and advising them that the College was conducting a formal investigation and that the College would assist any student in reporting the incident to the police. The Title IX Director also identified the Title IX Coordinator and Compliance and Ethics Specialist (Compliance Specialist) as the investigators and explained that they would be conducting interviews, and that each student would be invited to submit a written statement. He also provided information about available College and community resources, services, and interim remedies, including academic adjustments, counseling, disability support services, and changes in class or work assignments, and advised the students to contact him to make arrangements for any such services. The Title IX Director also attached a copy of the Policy to his email response, which detailed how to file a complaint, reporting options, and supportive measures.

The Title IX Director told OCR that the decision to investigate the Professor had already been made when Student A sent her [redacted content] email, and thus, Student B was considered the

reporting party for the [redacted content] incident. Both he and the Title IX Coordinator told OCR that they did not consider Student A, or any of the other students in the class, to be a reporting party. Nonetheless, all students in the class were given the opportunity to provide information and receive supportive services, which is corroborated by the email documentation provided by the College.

On [redacted content], the Title IX Coordinator emailed the students in the class, including the Student, advising them of the investigation and asking that they provide a written statement by [redacted content]. She also offered to conduct in-person interviews, provided the contact information for the Title IX Director for questions about the progression of the investigation, advised the students to let the Title IX Director know if they needed any supportive services and included a link to the College's Title IX webpage, which included a copy of the College's Sexual Misconduct Policy.

On [redacted content], the Title IX Director emailed the counseling department that Student [redacted content] needed counseling services stemming from her involvement in a Title IX sexual misconduct investigation. Email documentation reflects that the counseling department identified a counselor for Student [redacted content] and reached out to Student [redacted content] to begin services.

Between [redacted content], the Title IX Coordinator and the Compliance Specialist interviewed the Chair, six students from the [redacted content] class, six students from another section of the class taught by the Professor, and four students identified by the Professor as witnesses. They also received one written statement from a student in the [redacted content] class. The Student did not give an interview or provide a written statement, nor did she request to schedule an interview or provide a written statement. She also did not request any supportive services.

On [redacted content], the Title IX Coordinator emailed Student B and the Professor a draft copy of the investigative report for their review pursuant to the College's Policy. The investigative report concluded that based on a totality of the circumstances and on the preponderance of the evidence, it was more likely than not that there was sufficient evidence to substantiate the allegation of sexual harassment and that the matter would be referred to Employee and Labor Relations and the Chair of the Department.

In a subsequent email exchange between Student [redacted content] and the Title IX Coordinator on [redacted content], Student [redacted content] relayed that she failed the [redacted content] class and believed it was because the Professor harassed her. Documentation provided by the College reflects that the College provided assistance to Student [redacted content] to re-enroll in the [redacted content] program and paid for Student [redacted content] to retake the course in [redacted content]. The College also provided tuition reimbursement or paid for at least three other students in the class to retake [redacted content].

On [redacted content], Student [redacted content] emailed a member of the College's Board of Trustees and relayed that her class had been subjected to sexual harassment by the Professor. The documentation demonstrates that the College granted Student [redacted content] a withdrawal from her current [redacted content] course [redacted content] due to struggles she was experiencing in the class as a result of the harassment from the prior semester. The documentation also shows that the College agreed to cover the cost of her tuition and fees to retake [redacted content] and three additional courses in the [redacted content] semester.

On [redacted content], the College provided written notice of the outcome of the investigation to the Professor and Student B. The letter stated: “Based on the preponderance of evidence, more likely than not, it is determined that [the Professor] engaged in unwelcome conduct of a sexual nature that was sufficiently severe, creating an intimidating, hostile, and offensive academic environment.” As a result, the letter informed the Professor that he was dismissed from employment at the College. On [redacted content], the Director of Employee and Labor Relations sent the Professor a Memorandum informing him that he was being terminated.

The College did not provide written notice of the outcome of the investigation to the Student or to Student A when it provided notice to the Professor and Student B. [Redacted paragraph].

In a subsequent data response, the College told OCR that it has taken steps to increase awareness on its campus of Title IX and sexual harassment, including:

- creating and distributing a “Title IX Resource Card” and a “Resource Guide” on Title IX and the Violence Against Women Act (VAWA) in hard copy and on the College’s website. The Resource Guide provides information about how to report incidents of sexual harassment and to whom such reports may be made;
- conducting climate surveys every two years since 2016, most recently in 2022, as state law requires of higher education institutions. (The College’s next climate survey is scheduled for 2024.) The College utilizes the survey results, which are posted online, to inform educational initiatives and guide its policy reviews;
- creating a video entitled “Speak Up MC” that introduces the climate survey to students and urges students to complete the survey; and
- creating a Title IX webpage, which is prominently located on the College’s website, and includes contact information for the Title IX Office and public safety, as well as information about how to file a complaint and how to access counseling and advising.

LEGAL STANDARDS

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual’s ability to participate in or benefit from the recipient’s education program or activity.

The applicable regulations provide that when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a postsecondary institution to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the postsecondary institution may decide to place the students immediately in separate classes, pending the results of its investigation.

If a postsecondary institution's investigation or other appropriate steps to determine what occurred identify harassment that creates a hostile environment, institutions are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A postsecondary institution also may be responsible for remedying the effects of the harassment on the student who was harassed.

ANALYSIS

OCR concludes that the College complied with the applicable requirements of Title IX by conducting a prompt and thorough investigation of the harassment allegations against the Professor. Although the Complainant asserts that the College did not interview the Student, the evidence reflects that the Title IX Director and Title IX Coordinator emailed all members of the class to invite each to provide a written statement, or participate in an interview. While the Student never responded, the College interviewed multiple other students from the class, students from the Professor's other [redacted content] class, and a staff member. In addition, while the Complainant asserts that the College failed to provide the Student with information about her rights and options pursuant to Title IX, the evidence reflects that the Title IX Coordinator and Title IX Director emailed all students in the class a copy of the College's Sexual Misconduct Policy, with an offer to discuss the provision of supportive services. However, OCR is concerned that the College did not provide the Student, Student A, or any of the other students in the class with notification that the College had completed the investigation, confirmed the existence of a hostile environment, and taken steps designed to end that hostile environment for affected students.

CONCLUSION

Pursuant to Section 302 of the CPM, the College resolved the complaint through a voluntary resolution agreement. The College signed the enclosed Agreement on June 27, 2023 which, when fully implemented, will address OCR's concern in this complaint. Specifically, the Agreement requires that the College provide written notification to all students in the Professor's [redacted content] class, in which the incident occurred, that the College completed its investigation of the complaint of sexual harassment by the Professor, and provide OCR with the results of the 2022 climate survey and a narrative summary of the steps it has taken in response to any concerns raised by the 2022 climate survey. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

The Complainant has a right to appeal OCR's determination within sixty (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 College. The College has the option to submit to OCR a response to the appeal. The recipient must submit any response within fourteen (14) calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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

Thank you for your cooperation in this matter. If you have any questions, you may contact Amy Niedzalkoski, Team Attorney, at (215) 656-8571 or by email at amy.niedzalkoski@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Director
Philadelphia Office

Enclosure

cc: Toi Carter, Esq.