



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

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**REGION V**  
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November 9, 2016

Dr. Sue Ellspermann  
President  
Ivy Tech Community College  
50 West Fall Creek Parkway North Drive  
Indianapolis, IN 46208

Re: OCR Docket # 05-14-6001

Dear President Ellspermann:

This is to advise you of the resolution of the above-referenced compliance review that was initiated at Ivy Tech Community College (College) by the U.S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 - 1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination based on sex in education programs or activities operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the College is subject to Title IX.

OCR's review examined whether the College discriminates against female students by failing to ensure that they have equal access to and equal opportunity to participate in the College's Science, Technology, Engineering, and Math (STEM) courses and programs. OCR's review specifically examined the College's policies, procedures, and practices relating to enrollment and retention of female students in its STEM courses and programs. In addition, OCR's review examined whether a sexually hostile environment exists for women who participate in the College's STEM courses and programs and whether the College has in place appropriate procedures through which students may file grievances alleging discrimination based on sex.

During its investigation, OCR reviewed data submitted by the College including student enrollment and retention data, conducted an onsite visit to five College campuses in different geographic regions, and interviewed College administrators, faculty, and staff. OCR also reviewed responses to a student survey and conducted focus groups of students in STEM programs.

Based on its investigation, OCR found that the College does not provide proper notice of its Title IX Coordinators' names and contact information to its students and employees, and does not disseminate this information as required by Title IX. OCR also found that the College's Non-Discrimination Notice does not meet the requirements of Title IX. OCR also concluded that the College's sexual harassment policy does not provide for the prompt and equitable resolution of grievances alleging discrimination based on sex.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Discussion between OCR and the College resulted in the College executing the enclosed resolution agreement (Agreement) on June 13, 2016. The Agreement commits the College to specific actions to address the violations identified above as well as the remaining Title IX issues pertaining to female student access to and equal opportunity to participate in STEM courses and programs and the environment for women who participate in STEM courses and programs. OCR noted some areas of concern, but did not make a compliance determination in regard to these issues.

This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

### **Applicable Regulations and Legal Standards<sup>1</sup>**

The Title IX regulation, at 34 C.F.R. § 106.21(a), states that no person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by a recipient. The Title IX regulation, at 34 C.F.R. § 106.23(a), states that a recipient shall not discriminate on the basis of sex in the recruitment and admission of students. The Title IX regulation, at 34 C.F.R. § 106.31(a), states 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 educational program or activity operated by a recipient of Federal financial assistance. In addition, under 34 C.F.R. § 106.36(a), recipients are prohibited from discriminating on the basis of sex in the counseling or guidance of students or applicants for admission.

#### *Different Treatment*

In determining whether a recipient discriminated against an individual on the basis of sex, OCR first determines if there are any apparent differences in treatment of similarly situated students of another sex. If apparent different treatment is found, then OCR evaluates the reason, if any, offered by the recipient to explain the differences in treatment to determine whether the reason is legitimate and non-discriminatory and whether the reason is merely a pretext for unlawful discrimination. Additionally, OCR considers whether the recipient treated students in a manner that was consistent with its established policies and procedures and whether there is any other evidence of discrimination based on sex.

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<sup>1</sup> See also the June 15, 2016 Dear Colleague Letter entitled “Gender Equity in Career and Technical Education,” which is found online at <http://www.ed.gov/news/press-releases/education-department-releases-guidance-gender-equity-career-and-technical-education>; the April 14, 2015 Dear Colleague Letter entitled “Guidance on Obligation of Schools to Designate a Title IX Coordinator,” which is found online at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>; the April 4, 2011 Dear Colleague Letter entitled “Guidance on Addressing Sexual Harassment/Sexual Violence,” which is found online at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>; and the January 19, 2001 guidance entitled “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, which is found online at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

### *Disparate Impact*

In addition to subjecting students to unjustified different treatment based on sex, institutions violate Title IX when they evenhandedly implement facially neutral policies or practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of sex. The resulting discriminatory effect is commonly referred to as “disparate impact.” In determining whether a facially neutral policy or practice has an unjustified, adverse disparate impact that violates Title IX, OCR will engage in the following three-part inquiry:

- 1) whether the policy or practice results in an adverse impact on students of one sex as compared with students of the other sex; and if so,
- 2) whether the policy or practice is necessary to meet an important educational goal; and, even in situations where an institution can demonstrate that its policies and practices are necessary to meet an important educational goal,
- 3) whether there are comparably effective alternative policies or practices available that would meet the institution’s stated educational goal with less of a burden or adverse impact on the disproportionately affected sex or is the institution’s proffered justification a pretext for discrimination.

Although disproportionate enrollment by sex alone does not constitute a violation of Title IX, recipients must conduct in a nondiscriminatory manner their admission, recruitment, and counseling practices, and respond to substantially disproportionate enrollment of individuals of one sex by reviewing their policies and practices for counseling students and, if applicable, addressing in those policies and practices any unlawful sex discrimination and sex stereotypes.

### *Sexually Hostile Environment*

Under Title IX, schools that receive Federal financial assistance are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment of a student can deny or limit, on the basis of sex, the student’s ability to participate in or to receive benefits, services, or opportunities in the school’s program. Sexual harassment of students, therefore, can constitute a form of sex discrimination prohibited by Title IX. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s program or activity.

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Conduct is unwelcome if the student did not request or invite the conduct and regarded it as undesirable or offensive.

In determining whether a sexually hostile environment exists in violation of the Title IX regulations, OCR considers whether, based on the totality of the circumstances, students were subjected to a sexually hostile environment by looking at:

- 1) Whether there was specific unwelcome conduct of a sexual nature in a school-related program or activity;
- 2) Whether this conduct was sufficiently serious to deny or limit students' ability to participate in or benefit from the program or activity;
- 3) Whether the recipient had actual or constructive notice of the sexually hostile environment; and
- 4) Whether the recipient failed to respond adequately to redress the sexually hostile environment.

In analyzing the totality of the circumstances, OCR considers the context, nature, scope, frequency, duration, and location of the incidents, as well as the identity, number, age and relationships of the persons involved.

If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out their responsibilities either conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct or engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the recipient is responsible for the discriminatory conduct whether or not it has notice. The recipient is also responsible for remedying any effects of the harassment on the student, as well as for ending the harassment and preventing its recurrence.

#### *Title IX Coordinator*

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires a recipient to designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX. The recipient is further required, at 34 C.F.R. § 106.9(a), to notify its students and employees of the name, office address, and telephone number of the individual designated to coordinate its efforts to comply with the Title IX regulation.

#### *Grievance Procedures*

The Title IX regulation, at 34 C.F.R. § 106.8(b), states that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by Title IX.

#### *Non-Discrimination Notice*

The Title IX regulation, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school 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 and that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator(s) or to OCR.

### **Background**

The College is the State of Indiana’s community college system and has 31 campuses across 14 geographic regions, as well as an online education program. Data provided by the College indicated that individual campus enrollment in 2013-2014 ranged from a low of 147 to a high of 38,988 and in 2014-2015 ranged from a low of 24 to a high of 37,430. The College offers associate’s degrees and/or certificates in 61 program areas, including the following 28 STEM programs: Advanced Forensics; Apprenticeship Technology (Telecommunications Technician); Automation Controls; Computer Information Systems; Computer Information Technology; Computer Science; Data Security; Database; Design Technology; Electronics and Computer Technology; Electrical Engineering Technology; Engineering Technology; Energy Technology; Industrial Technology; Information Security; Java Programming; Manufacturing Production and Operations; Mechanical Engineering Technology; Nanotechnology; Network Administration; Network Security; PC Support and Administration; Pre-Engineering; Routing and Switching; Sustainable Energy Technology; Systems Security; Visual Programming; and Web Management.

The associate’s degree is the ultimate degree offered by the College. Data provided by the College showed that the number of STEM programs offered at individual campuses ranged from a low of 0 to a high of 19; most campuses offered between 8 and 16 STEM programs.

According to the College, it “serves as the state’s engine of workforce development, offering affordable degree programs and training that are aligned with the needs of its community along with courses and programs that transfer to other colleges and universities in Indiana.”<sup>2</sup> The College indicated that it responds to career and education opportunities available in various Indiana communities; therefore, not all programs are offered at all locations.

### **Enrollment and STEM Matriculation Data**

In 2013-2014, the College reported an enrollment of 90,956 female students and 78,168 male students who took one or more classes.<sup>3</sup> The data showed that female students composed only 1,705, or 14.1%, of the College’s total student enrollment in STEM programs across all regions, while male students composed 10,351, or 85.9%, of the College’s total student enrollment in STEM programs across all regions.

In 2014-2015, overall College enrollment decreased as did STEM program enrollment for males and females. According to the College, enrollment was at its peak in 2011 as a result of a recession in Indiana but has decreased over the years as the job market has grown. The College

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<sup>2</sup> <http://news.ivytech.edu/2013/04/12/ivy-tech-community-college-merging-northwest-and-north-central-regions/>

<sup>3</sup> The College provided information showing the sex of most, but not all students; students whose sex was unreported are not counted for purposes of determining the percentage of male and female students enrolled overall and in STEM programs, and the percentage of students who graduated overall and from STEM programs.

reported an enrollment of 84,803 female students and 73,870 male students. The data showed that, in 2014-2015, female students composed only 1,265, or 14.4%, of the College's total student enrollment in STEM programs across all regions, while male students composed 7,545, or 85.6%, of the College's total student enrollment in STEM programs across all regions.

Female students enrolled in STEM programs were underrepresented to a statistically significant degree, overall across the College's 14 regions and in each College region, compared with female students' overall and regional enrollment at the College during both 2013-2014 and 2014-2015.

The College also provided graduation data for 2013-2014 and 2014-2015. The data showed that female students were 11,393, or 59.7%, and male students were 7,679, or 40.3% of the 19,072 students who graduated in 2014; female students were 12,767, or 63.0%, and male students were 7,500, or 37.0%, of the 20,267 students who graduated in 2015. Of the 2,648 students who graduated from a College STEM program in 2014, the data showed that female students were 353, or 13.3%, of the graduates, while male students were 2,296, or 86.7%, of the graduates. Of the 1,916 students who graduated from a College STEM program in 2015, the data showed that female students were 283, or 14.8%, of the graduates, while male students were 1,633, or 85.2%, of the graduates.

Female students were underrepresented to a statistically significant degree among students who graduated from STEM programs compared with the representation of female students among students who graduated from the College in both 2014 and 2015.

### **Recruiting**

The College is an open enrollment institution and does not have competitive admissions processes for any of its 28 STEM programs. However, some programs or courses, including some STEM programs and courses, require students to have met certain prerequisites before enrolling.

The College reported that information regarding all of its programs is available on the College's website and in its brochures. The College told OCR that it does not produce STEM-specific brochures, but that admissions counselors and academic advisors are available to provide prospective and current students information about any program in which they have interest. The College told OCR that the College's faculty and staff participate in a variety of recruiting efforts, including visiting local high schools, county fairs, and other community events, as well as mailings. For example, some interviewees stated in 2015 that several campuses were preparing to organize or had in place student groups to increase the enrollment and retention of women in STEM programs. In particular, one interviewee said there is a "Women in Construction" group at his campus and another said she was trying to start a "Women in STEM" program at her campus. In addition, to engender interest in STEM programs among elementary and secondary students, some campuses host annual events for these students. For example, the Bloomington campus hosts a program entitled, "WOW That is Engineering" for 6th-8th graders

to encourage the pursuit of engineering and the College's Northeast region offers a summer STEM camp<sup>4</sup> for 8-14 year old students.

### **Academic Advising**

Data and testimony from academic advisors indicated that students are not placed in specific programs by the College, but receive academic advising to help them make decisions about program enrollment. The College informed OCR that the academic advising office at each campus serves the counseling role for enrolled students. Across all campuses, the College has 26 academic advising administrators and 180 full-time academic advisors. The academic advising administrators at each campus manage the advising units at a particular campus and supervise the academic advisors.

According to the College's Assistant Vice President for Academic Advising (Advising VP), since January 2013, the Advising VP's office has been charged with the development of a uniform system of academic advising for all College campuses. According to the Advising VP, her office selected the College's official on-line advising and record keeping system, provided common training for all College academic advisors, created a uniform job description for advisors, and established minimum academic and experience qualifications for all College advisors.

According to officials interviewed by OCR, the College requires all new, transfer, and readmitted students to meet with an academic advisor prior to registration. According to the Advising VP, most of the advisors at each campus are "generalist" advisors with knowledge of all program offerings at their campus, as well as those offered at nearby campuses if the particular academic program is not offered at the advisor's assigned campus. Testimony from staff members at some campuses indicated that advisors at their campuses have a specialty in specific academic areas. An advisor serves a particular student until the student accumulates between 15 and 24 credit hours, at which time the student is provided a faculty advisor in the student's chosen academic program. The faculty advisor then becomes the student's academic advisor and the previous advisor removes that student from his or her caseload.

Testimony of academic advisors indicated that they coordinate with the campus Office of Career Services when students are undecided about a career path. The College career service administrators use the Indiana Career Explorer (Career Explorer) website<sup>5</sup> in conjunction with a student's high school courses and grades, stated academic interests, and test scores to assist the student in selecting a program of study.

According to academic advisors and administrators interviewed by OCR, although the tools and assessments are useful, the selection of an academic program ultimately lies with the student. Several advisors and administrators informed OCR that it is not their job to "sell" one academic program over another or to discourage students from selecting one academic program over

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<sup>4</sup> <http://ivytech.edu/northeast/stem/>

<sup>5</sup> <http://indianacareerexplorer.com/>

another. Testimony established that the College does not direct females toward enrollment in specific programs, including STEM-related academic programs.

During the investigation, OCR prepared a student survey, which in part inquired about STEM participation, and the College distributed it. Six hundred and eighty-five students responded to the survey. The majority of students who responded to OCR's survey were not in STEM programs. A number of male and female students reported anonymously that the reason they are not enrolled in such programs is that they have no interest in those programs. However, four unidentified female students reported on the survey being interested in STEM programs but counseled away from the program by a College academic advisor. Students also expressed concern on the survey about the quality of academic advising in providing information about the College's programs, with 28% of male students and 32% of female students reporting that advisors are "not effective at all" or "only slightly effective" in informing students of the program options. In addition, program chairs interviewed by OCR and students who participated in focus groups noted that academic advisors are not always familiar with each of the programs at their campus, and students said this may cause advisors to steer them into courses that are not necessary for a particular program. OCR provided all students who took the survey and participated in the focus groups contact information for OCR if they wanted to provide additional specific information about their experiences at the College, but no student contacted OCR to do so.

Academic advising administrators interviewed by OCR said they coordinate with academic program chairs to ensure that academic advisors are aware of academic program curriculum changes and other necessary information. These administrators asserted to OCR that they also have regular contacts with other faculty.

According to information provided by the College, administrators coordinate with each other at a regional level through regular meetings to discuss advising issues among their respective campuses; testimony did not indicate that this typically includes a discussion of the underrepresentation of female students in STEM programs.

### **Retention and Attrition**

The College reported that it has implemented an initiative to recruit and retain female STEM faculty, entitled IvyWiSTEM (Ivy Women In STEM) program, which is designed to address four goals: (1) collect and analyze institutional information to determine variances in recruitment, retention, and advancement of female STEM faculty at each of the College's regions; (2) gather data and suggestions from external sources to foster collaboration and develop institutional transformation strategies; (3) build institutional support for the IvyWiSTEM program and transformation at the College; and (4) develop a comprehensive institutional transformation plan for the College. The College developed this program based on a grant in fall 2012 from the National Science Foundation to "support self-assessment activities in order to identify specific issues in the recruitment, retention, and advancement of female STEM full-time and adjunct faculty."

According to an announcement of this grant on the College's website,<sup>6</sup> nearly 70% of full-time and more than 60% of adjunct non-STEM faculty employed at the time at the College are female, but less than 35% of full-time and adjunct faculty within the STEM disciplines employed at the time at the College are female. The College did not indicate to OCR whether the proportion of female faculty in STEM has increased as a result of this program or whether it had conducted other assessments to determine whether this initiative resulted in any positive effects on students.

A College Vice President stated that the College recognized that some student attrition in its STEM programs was due to rigorous math requirements, specifically Algebra. In response, the College created Math Pathways to Success<sup>7</sup> to better fit program and degree outcomes. There is a quantitative pathway, a science/math pathway, and an applied technology career pathway, which the College asserts will better benefit students in STEM degree programs by eliminating math courses that do not provide practical skills for related careers and giving students clear choices of math classes such that, in the event a student changes majors, math requirements need not be repeated. The Vice President also informed OCR of a recently implemented strategy for retaining students, which included adding paid internships and co-op placements to some technology programs; in the co-ops, students participate in cohorts attending classes three days per week and working two days per week. The College did not provide information about whether this strategy has been successful to enroll and retain female students; as noted above, the overall enrollment of both male and female students decreased from 2013-2014 to 2014-2015.

The College informed OCR that its retention rate from 2012 to 2013 was 51.5% for female students and 44.0% for male students overall and was 52.0% for female students and 48.4% for male students in STEM programs. The rates were not disaggregated by campus or academic program and applied only to students enrolled in college for the first time and not continuing students or students who transferred into the College.

### **Education Environment: Sexual Harassment**

The College reported in its August 2014 response to OCR's data request seeking copies of all written complaints and narrative descriptions of verbal complaints alleging sex discrimination, including sexual harassment occurring in or related to STEM courses or programs during the 2011-2012, 2012-2013, and 2013-2014 academic years, that it had no record of any complaints (or investigative files) concerning sexual harassment in STEM programs for the relevant academic years.<sup>8</sup> In addition, The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act data showed no sex offenses reported at the College in 2011, 2012, or 2013. The 2014 data showed 2 incidents of fondling, and for the Violence Against Women

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<sup>6</sup> <http://ivytechnews.com/2012/10/24/ivy-tech-community-college-awarded-nearly-500000-in-grants/>

<sup>7</sup> <http://www.ivytech.edu/math-pathways/>

<sup>8</sup> The College specifically reported, "In response to request #33, the Respondent would note that it has no records of such complaints during this time frame. The only sexual harassment/discrimination complaint arising out of a STEM course that Respondent can recall occurred during the summer of 2002, twelve years ago." The College provided details regarding this incident, in which a female student alleged that a male student had made derogatory remarks in class; the College investigated and determined that it could not establish that the alleged remarks were made.

Act of 1994 offenses showed 3 incidents of stalking, 1 incident of domestic violence, and 1 incident of dating violence.<sup>9</sup>

In May 2015, the College distributed surveys designed by OCR to all students at the College in which they were asked to describe any sexual harassment or sex discrimination they or anyone they know had experienced and indicate whether it occurred in a STEM course. As noted above, 685 students responded to the survey. Only two anonymous respondents identified instances that occurred in a STEM course; one said her math professor commented on her clothing and the other said a friend was harassed by an instructor in a computer class, but provided no additional details.

Students who participated in focus groups anonymously shared comments regarding the STEM programs. For example, one student said she felt set back when a male student told her she should switch majors; another student reported that she felt bias from other students who made derogatory remarks about women; and someone else reported that a fellow student said a woman in a “guys’ field” should expect negative remarks. OCR offered all students the opportunity to provide additional specific information individually, but no student contacted OCR to do so.

Testimony differed among College personnel as to how they would handle and report instances of sexual harassment that were brought to their attention, as they identified different College administrators or the Assistant Title IX Coordinator on their campuses to whom they would report such harassment. OCR found no information to indicate that reports of sex harassment are automatically referred to the Title IX Coordinator or that the Title IX Coordinator has the authority and responsibility to investigate all sex harassment complaints, monitor outcomes, identify patterns, or assess the effects of these complaints on campus climate or STEM enrollment.

### **Title IX Policies and Procedures**

#### *Designation, Training, and Notice of Title IX Coordinators*

The College told OCR that it has designated one system-wide Title IX Coordinator; on its website, the College identifies its Assistant General Counsel as the Title IX Coordinator.<sup>10</sup> The website includes his name, email address, and telephone number, but does not include his office address. The College also told OCR that it has designated 23 Assistant Title IX Coordinators located at campuses throughout the state; some Assistant Title IX Coordinators cover more than one campus. The College told OCR that students have notice from its Campus Connect Portal of each Assistant Title IX Coordinator, but the College did not provide documentation to OCR to confirm this and the information was not readily found on the College’s website. Several Assistant Title IX Coordinators stated that they did not receive any specific training regarding how to handle sex discrimination or sexual harassment complaints.

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<sup>9</sup> <http://ope.ed.gov/security/GetAggregatedData.aspx>

<sup>10</sup> <http://www.ivytech.edu/security-safety/>

*Non-Discrimination Notice*

The College’s Code of Student Rights and Responsibilities (Student Code) is available on the College’s website<sup>11</sup> and has sections entitled “Right to Freedom from Discrimination” and “Right to Freedom from Harassment.” The Student Code provides, “Students have the right to study, work, and interact in an environment that is free from discrimination in violation of law or college policy by any member of the college community ... The college will not exclude any person from participation in its programs or activities on the basis of arbitrary considerations of such characteristics as age, color, disability, ethnicity, sex, gender, gender identity, marital status, national origin, race, religion, sexual orientation, or veteran status. A student has the right to be free from such discrimination by other students that has the effect of interfering with the student’s ability to participate in programs or activities of the college.” The Student Code contains no specific statement that Title IX prohibits discrimination based on sex.

The College’s New Employee Handbook (Employee Handbook) is also available on the College’s website<sup>12</sup> and has a section entitled “Equal Employment Opportunity/ Affirmative Action (EEO/AA) Policy,” which also provides that the College will not discriminate against any person because of gender or other protected class. The Employee Handbook further provides that “the College is committed to providing a work environment free of discrimination.” The Employee Handbook contains no specific statement that Title IX prohibits discrimination.

Neither of the Non-Discrimination notices in the Student Code and Employee Handbook directs complaints or inquiries concerning the application of Title IX and its implementing regulation to the Title IX coordinator or to OCR. The College did not provide any other written materials that included a Non-Discrimination notice.

*Pre-April 2016 Sexual Harassment Policy and Grievance Procedures*

The College’s sexual harassment policy and grievance procedures (Policy) in place at the time the College provided data to OCR were published in the Student Rights and Responsibilities Handbook. As written, the Policy applied to complaints filed by students against other students, employees, or non-employees.<sup>13</sup> It defined sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.” The Policy included examples of sexual harassment including demands for sexual favors, photographs of a sexual nature, and certain physical conduct.

Under the Policy, students were “encouraged” to report harassment “before it becomes severe or pervasive.” A student’s complaint of sexual harassment by another student could be filed with the Vice Chancellor for Student Affairs or an academic dean, and a student’s complaint of sexual harassment by an employee could be filed with the Vice Chancellor for Student Affairs, the employee’s supervisor, the Director of Human Resources, or anyone else in a managerial role.

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<sup>11</sup> <https://www.ivytech.edu/studentcode/index.html>

<sup>12</sup> <https://www.ivytech.edu/hr/ft-handbook.html>

<sup>13</sup> The Policy was not explicit that the procedures apply to complaints alleging discrimination or harassment carried out by employees, other students, and third parties; instead it discussed how a student could file a complaint against students, employees, and non-employees.

The Policy did not provide names or contact information for these individuals, for the Title IX Coordinator, or for Assistant Title IX Coordinators. The Policy mandated that all supervisors and members of management who received a complaint or observed prohibited behavior were to report the harassment promptly to the highest ranking official at the facility, to the Vice Chancellor for Student Affairs or to the Director of Human Resources.

Once a complaint was filed, the Policy provided that an investigation would occur, but did not specify who would conduct the investigation. It stated, however, “Under no circumstances will the individual who conducts the investigation or who has any direct or indirect control over the investigation be subject to the supervisory authority of the alleged harasser.” Other than the prohibition against the individual who conducts or controls the investigation being subject to the supervisory authority of the alleged harasser, the Policy did not prohibit conflicts of interest (real or perceived) by those handling the procedures. The Policy did not include timeframes for major stages of the grievance process or a process for extending timelines.

The Policy provided an assurance that records of harassment complaints are confidential and an allegation of harassment will be shared only with those who need to know. The Policy did not indicate that there would be an adequate, reliable, and impartial investigation. The Policy did not require that training be provided for those implementing the grievance procedures, including the Title IX Coordinators, investigators, and adjudicators. Further, the Policy did not indicate whether the parties will have access to evidence and information used in the investigation. The Policy did not provide for interim measures before the final outcome of the investigation. The Policy did not provide for a hearing including an equal opportunity to present witnesses and relevant evidence.

The Policy provided that, after all the evidence was obtained, interviews were conducted, and credibility issues were resolved, there would be a determination as to whether harassment occurred and the parties would be informed of the determination. The Policy did not require this notice to be in writing; it also did not indicate who will make the final determination. The Policy stated that, after a determination was made, the College would take prompt and appropriate corrective action including sanctions up to and including dismissal of a student or termination of employment. The Policy did not include an assurance that the College would take steps to prevent recurrence of harassment or would correct its discriminatory effects on the complainant and others, if appropriate. In addition, the Policy did not require that documentation of proceedings be maintained.

The Policy did not include specific appeal rights for sexual harassment complaints or specifically refer to the Student Handbook disciplinary proceeding appeal rights. OCR noted that a student subject to disciplinary action had the right to appeal a finding of personal misconduct or a sanction to the Vice Chancellor for Student Affairs. A student who was found responsible for acts of sexual harassment could choose to use the general misconduct appeal process. The appeal process was not also available to the individual who filed the complaint of sexual harassment.<sup>14</sup>

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<sup>14</sup> The Student Rights and Responsibilities Handbook provided that, in the case of an appeal, the Vice Chancellor for Student Affairs or his/her designee would determine, based upon clear and convincing evidence, whether the accused student violated the College’s policy. A student could appeal the finding to an Appeals Board composed of

*Current Sexual Harassment Policy and Grievance Procedures*

In April 2016, the College published a revised Student Code, which includes a section titled, “Responding to Incidents Involving Allegations of Sexual Misconduct by or Against Students.” The Student Code states that the standard of proof for sexual misconduct cases is the preponderance of evidence standard. The Student Code provides that the investigation and determination will generally be concluded within 60 days of the report, “[a]bsent special circumstances.” The Student Code contains no explanation of the “special circumstances” or procedures for extending timelines.

The Student Code states, “Upon receipt of a report of sexual misconduct the College will take immediate and appropriate steps to investigate the incident.” The College maintains confidentiality to the extent possible in its investigation. The College “will take all reasonable steps to investigate and respond to the complaint consistent with those requests, keeping in mind that the College must weigh such requests against its obligation to provide a safe, non-discriminatory environment for all students, including the complainant.”

The Student Code indicates that the accused student meets with the Chief Student Affairs Officer or designee and may choose to accept responsibility for violating the College’s policies regarding personal misconduct or deny responsibility. In the event the accused student accepts responsibility for the alleged violation, the student waives the right to appeal and receives a sanction from a designated student affairs conduct officer. The Student Code says, “In such situations, the complainant will be informed of the proposed sanction and given an opportunity to submit a written statement to the conduct officer for consideration in determining appropriate sanctions.”

The Student Code states, “In appropriate cases, the College may pursue alternative resolution with the consent of all parties at any point in the investigation process. Alternative resolution options may include, but are not limited to, mediation, development action plans, voluntary resolutions, and/or appropriate sanctions.” However, mediation may not be used in cases involving any sexual violence. The Student Code states that in cases not involving sexual violence, “the complainant will not be required to resolve the problem directly with the respondent, unless desired by the complainant. All parties must be notified of the right to end the alternative resolution process at any time, and begin the formal process.”

If the respondent denies responsibility for the alleged violation, the College conducts an investigation, which may include, but is not limited to, interviews with the complainant, the respondent, and other relevant witnesses, as well as the examination of written statements and relevant documents. The Student Code states,

[T]he conduct officer, or other party in charge of investigating and determining appropriate sanctions will, upon completion of the investigation and consistent

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two faculty members, two staff, and two students appointed by the Vice Chancellor for Student Affairs. The Appeals Board would issue a written recommendation for the Chancellor’s approval within 14 calendar days of the hearing.

with the preponderance of the evidence standard, and upon continuing consultation with the College’s Title IX Coordinator, make a determination of responsibility. If the facts determined in the investigation warrant a finding of responsibility on the part of the respondent, a sanction will be determined and issued, with a copy to the complainant. In the event that the investigation fails to find responsibility a finding of no responsibility will be issued.

Potential sanctions listed in the Student Code range from reprimand and warning to expulsion.

The Student Code does not indicate if both parties have the option to appeal. The procedure states that the student may request an appeal of the finding with 14 calendar days of receiving the notice of a finding of personal misconduct. The appeal must be submitted in writing to Chief Student Affairs Officer or designee. If an appeal is filed, the Chief Student Affairs Officer or designee convenes an Appeals Board (Board) composed of two faculty members, two staff, and two students appointed by the Chief Student Affairs Officer or designee. According to the Student Code, “The board holds a hearing on the issue(s) raised by the student. The appealing student will then be given an opportunity to directly confront the witnesses against him, present any pertinent evidence, although evidence of past sexual practices of, or past sexual relations with the complainant will be limited as noted above ... If the appealing student appealed the finding that sexual misconduct occurred, the board determines whether a preponderance of the evidence supports the finding of misconduct.” The Board issues a written recommendation to the Chancellor within 14 calendar days after the appeals hearing ends, including the findings of fact and reasoning supporting those conclusions. The Chancellor’s decisions are final. The Board’s presiding officer sends notice of the Chancellor’s decision to the complainant and respondent, the College’s Title IX coordinator, and the Chief Student Affairs Officer or designee.

A student may not appeal the Board’s factual conclusions as to whether misconduct occurred, or the sanction imposed, but may appeal within 14 calendar days to the Office of the Vice President for Student Experience if the student “believes that a procedural error occurred at the Appeal Board hearing that was serious enough to prevent the board’s full and fair consideration of a misconduct finding or sanction.” The Student Code says, “If the record indicates that a serious procedural error occurred earlier in the proceedings that prevented the appeal board’s full and fair consideration of a misconduct finding or sanction, the Vice President for Student Experience (Student Affairs) will send the matter back to the Appeals Board for further proceedings to correct the error.”

The Student Code does not specifically prohibit conflicts of interest (real or perceived) by those handling the procedures, does not specify that the parties will be provided access to information, does not contain a prohibition against retaliation, and does not contain information about remedies, either on an interim basis during the investigation or to eliminate a hostile environment that has been created.

### **Analysis and Conclusion**

*Title IX Coordinator*

The College designated its Assistant General Counsel as the one system-wide Title IX Coordinator. Title IX does not categorically exclude particular employees from serving as Title IX coordinators. However, combining the Title IX coordinator responsibilities with the responsibilities of certain employees, such as the general counsel, may raise a serious conflict of interest.<sup>15</sup> Additionally, OCR determined that the College does not provide proper notice of its Title IX Coordinators' names and contact information to its students and employees. The College's website has the system-wide Title IX Coordinator's name, email address and telephone number, but it does not include his office address. In addition, there was no documentation provided to OCR to establish that the College gave notice to its students and employees of the Assistant Title IX Coordinators' names, office addresses, email addresses, and telephone numbers. Therefore, the College is not in compliance with the Title IX regulation, at 34 C.F.R. § 106.8(a).

#### *Non-Discrimination Notice*

OCR determined that the College's Non-Discrimination Notice does not meet the requirements of Title IX. The Non-Discrimination Notice does not state that Title IX prohibits discrimination based on sex. In addition, the Non-Discrimination Notice does not direct complainants or persons with inquiries concerning the application of Title IX and its implementing regulation to the Title IX Coordinator or to OCR. Further, except in the Student Code and Employee Handbook, the College's Non-Discrimination Notice is not included in other written materials used for each announcement, bulletin, catalog, or application form which it makes available to students or employees. Based on the above, OCR determined that the College is not in compliance with the Title IX regulation, at 34 C.F.R. § 106.9(b).

#### *Failure to Provide a Prompt and Equitable Grievance Procedure*

OCR determined that the College's Policy in place when the review was initiated did not comply with the standards in Title IX that requires prompt and equitable resolution of sexual harassment complaints. The Policy did not include the following components: notice to students and employees of the procedures, including where complaints may be filed; an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence; designated and reasonably prompt timeframes for major stages of the grievance process, as well as the process for extending timelines; written notice to the parties of the outcome of the complaint; an assurance that the College will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate; steps to protect the complainant as necessary, including interim steps before the final outcome of the investigation; a prohibition of retaliation; and a requirement to maintain documents of any proceeding.

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<sup>15</sup> See pp. 11-12 of OCR's April 29, 2014 guidance document entitled "Questions and Answers on Title IX Sexual Violence," which is found online at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>; and pp. 2-3 of the April 14, 2015 Dear Colleague Letter entitled "Guidance on Obligation of Schools to Designate a Title IX Coordinator," which is found online at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.

In addition, the Student Code published in April 2016, which contains procedures for responding to allegations of sexual misconduct, has not resolved OCR's concerns. It is not readily accessible and does not include an assurance that the College will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate; an assurance that the College will take steps to protect the complainant as necessary, including interim steps before the final outcome of the investigation; and a prohibition of retaliation. In addition, it is not clear that appeals may be filed by both parties or unless there has been a finding of personal misconduct.

Based on the above, the College is not in compliance with the Title IX regulation, at 34 C.F.R. § 106.8(b).

### *STEM and Hostile Environment*

Prior to the conclusion of OCR's investigation and compliance determinations under Title IX regarding female student access to and equal opportunity to participate in STEM courses and programs and the environment for women who participate in STEM courses and programs, the College expressed interest in voluntarily resolving the remaining issues of the compliance review with an Agreement. OCR noted some areas of concern pertaining to the academic advising and the attrition of female students in the STEM program and courses that may have contributed to their underrepresentation in enrollment, retention and graduation from the STEM program and courses as compared to the proportion of all students who enrolled and graduated in 2014 and 2015. However, OCR did not obtain sufficient evidence to make a compliance determination. Additionally, OCR observed that the lack of uniformity in the College's procedures for reporting, documenting and responding to possible harassment may have prevented OCR and the College from determining whether a hostile environment exists in its STEM courses and programs. While some students and staff reported to OCR incidents of possible bias and harassment based on sex, OCR had not yet obtained sufficient evidence to make a finding as to whether a sexually hostile environment exists for students in STEM courses and programs. Accordingly, OCR is not making a compliance determination under Title IX with respect to the issues of female student access to STEM programs and whether the female students were subjected to a hostile environment.

On June 13, 2016, the College signed the enclosed Agreement that is designed, when fully implemented, to resolve the areas of noncompliance and the remaining issues in the compliance review. The provisions of the Agreement are aligned with OCR's findings and observations regarding the specific civil rights issues examined in the review.

The Agreement requires the College to establish a STEM Committee that includes the Title IX Coordinator, College administrators, academic advisors, STEM and non-STEM faculty, and STEM and non-STEM students. The STEM Committee will review, assess, and make recommendations to the College relating to the recruitment, enrollment, and retention of female students in the College's STEM courses and programs to ensure that all students are provided with equal access to and an equal opportunity to participate in the College's STEM courses and programs. The review and assessment includes reviewing previous sex discrimination and sexual harassment complaints, including determining whether any such harassment affected their

participation in STEM programs, and climate surveys. The STEM Committee will undertake actions to ensure that all students are provided with equal access to and an equal opportunity to participate in the College's STEM courses and programs.

The Agreement requires the College to develop a plan to improve the academic advising provided to students to ensure that students receive complete and accurate information regarding the College's STEM courses and programs. The Agreement requires the College to develop a monitoring program to assess the effectiveness of the College's efforts to increase female enrollment and retention in the College's STEM courses and programs. The College, through its Title IX Coordinator, will be responsible for identifying and addressing patterns of sex discrimination.

The Agreement requires the College to develop and provide to OCR for review and approval a job description for the Title IX Coordinator(s) that ensures that the Title IX Coordinator's role and responsibilities are consistent with Title IX, to submit to OCR the name and credentials of the individual it proposes to designate as its new Title IX Coordinator, and to provide notice to students and employees of the Title IX Coordinator's name or title, office address, email address, and telephone number. The Agreement further requires the College to develop and provide to OCR for review and approval a proposed notice of Non-Discrimination and to provide proper notice to students and employees of the Non-Discrimination notice.

The Agreement requires the College to review and revise its written policies and procedures (Title IX Policies and Procedures) to ensure that they provide for the prompt and equitable resolution of complaints alleging any actions that would be prohibited by Title IX, including alleged incidents of sexual harassment and/or discrimination in the provision of STEM opportunities. The Agreement requires the College to maintain and report to OCR information regarding any sexual harassment complaints occurring through 2018; OCR will review the information to determine whether the College has taken appropriate actions to ensure that there is not a sexually hostile environment for female students in STEM courses and programs. The Agreement also requires the College to provide to OCR, for review and approval, the revised Title IX Policies and Procedures, and to adopt, implement and publish the revised Title IX Policies and Procedures.

The Agreement requires the College to provide effective training on the College's revised Title IX Policies and Procedures to College administrators, faculty, and students annually and to provide additional training on how to conduct adequate, reliable, and impartial sex discrimination and harassment investigations to all employees who are directly involved in processing, investigating and/or resolving complaints or other reports of sex discrimination/harassment.

Finally, the Agreement requires the College to maintain documents relating to STEM recruitment, enrollment, attrition and graduation rates, along with information about specific complaints or other reports of sex discrimination, including sexual harassment.

Based on the commitments the College has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of this compliance review. OCR

will monitor the College's implementation of the Agreement. The College has agreed to provide data and other information demonstrating implementation of the Agreement in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the College has complied with the terms of the Agreement and is in compliance with Title IX.

If the College fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR's determination in an individual OCR compliance review. It 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.

It is unlawful to harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in a compliance review.

Additionally, 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR greatly appreciates the ongoing cooperation received from the College during the investigation and resolution of this case. We particularly appreciate the cooperation of Mr. Jim

Clark, Assistant General Counsel. If you have any questions, please contact Jeffrey Turnbull, Team Leader, at 312-730-1611 or by e-mail at [Jeffrey.Turnbull@ed.gov](mailto:Jeffrey.Turnbull@ed.gov).

Sincerely,

Adele Rapport  
Regional Director

Enclosure

cc: Mr. Jim Clark