

Thomas J. Laginess, Esq.
Cummings, McClorey, Davis & Acho, P.L.C.
33900 Schoolcraft Road
Livonia, Michigan 48150

Re: OCR Docket #15-13-2031

Dear Mr. Laginess:

This letter is to notify you of the disposition of the above-referenced complaint filed on January 25, 2013, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Mid Michigan Community College (the College). The complaint alleged that the College does not have a Title IX coordinator and grievance procedures and that the nursing program's policies discriminate against pregnant students.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the College is subject to this law, and OCR therefore had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following legal issues:

1. whether the College failed to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including the investigation of any complaint alleging noncompliance with Title IX or alleging any actions which would be prohibited by Title IX, and to notify its students and employees of the name, office address and telephone number of the employee(s) as required by the Title IX implementing regulation at 34 C.F.R. § 106.8(a);
2. whether the College failed to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by Title IX as required by 34 C.F.R. § 106.8(b); and
3. whether the College discriminates against, or excludes students from its education program or activities, including any classes or extracurricular activities, on the basis of pregnancy in violation of 34 C.F.R. § 106.40.

Prior to the conclusion of OCR's investigation, the College agreed to voluntarily resolve the allegations pursuant to Section 302 of OCR's *Case Processing Manual* (the *Manual*). The College signed the enclosed agreement, which, once implemented, will fully address all three allegations in accordance with Title IX. We set forth below the bases for OCR's determinations.

During OCR's investigation to date, OCR interviewed the Complainant and relevant College administrators. OCR also obtained documentation from the College and reviewed various College policies and procedures regarding pregnancy and discrimination based on sex. OCR also reviewed the College's procedures for resolution of complaints alleging sex discrimination/ harassment, as well as the College's nursing program's policies and procedures regarding pregnancy.

The College has two campuses, one in Harrison, Michigan, and one in Mt. Pleasant, Michigan. The College offers four types of programs, including health sciences, occupational programs, trade and technical programs, and a transfer program that includes general studies. Within most of these programs, students can select from short-term training options, two-year associate degrees, or transfer degrees that integrate into four-year programs at other colleges and universities. The allegations in this complaint regarding pregnancy were directed at the nursing program, one of the health sciences programs offered by the College at both of its campuses.

The College's College Catalog (the Catalog) and the nursing program's Student Nurse Handbook (the Nurse Handbook) both contain general complaint procedures, which differ slightly but are substantially the same. The Catalog encourages students to discuss complaints with the appropriate College personnel. The Catalog provides that, if students have an equal opportunity/affirmative action concern, they should contact the human resources department. It further provides that, if students have a complaint regarding an instructor, they should first discuss the matter with the instructor if they feel comfortable

doing so. The Catalog refers all “non-instructor problems” to the associate dean of student and academic support services, who will direct the student to the appropriate department. The last sentence of the grievance procedure in the Catalog states, “Sexual Harassment: Human Resources Department” and provides a telephone number. However, during interviews of College administrators, OCR learned that in practice, as opposed to the information above, students would go to the executive dean to file a sexual discrimination complaint.

While each policy does include a telephone number, none of the policies identify a contact person or office address. The policies explain that, upon receipt of a complaint, the appropriate College representative will conduct an investigation, but they do not provide grievants the opportunity to identify witnesses and other evidence. They also contain no assurance that the College will take steps to prevent recurrence of any sex discrimination found to have occurred and to correct any discriminatory effects on the grievant and others, if appropriate.

With respect to the nursing program’s policies and procedures regarding pregnant students, the Nurse Handbook contains several applicable provisions. The Nurse Handbook requires all students in the nursing program to provide the results of a health physical, which includes a specific question as to whether the student is pregnant. The Nurse Handbook also contains a provision regarding temporary conditions, which states that if a student was pregnant or were to become pregnant, the student must provide documentation from her physician giving her medical clearance to participate in the nursing program. Additionally, the Nurse Handbook contains a short “Pregnant Students” section, which states as follows:

If students are planning a pregnancy, it is strongly recommended that they re-evaluate their application or continuation in the nursing program. No consideration will be made for class, skills lab or clinical schedules to accommodate pregnant (planned or unplanned) students. All pregnant students MUST have documented physician clearance to begin or proceed in the nursing program. The clearance must be for attending and participating in skills lab, class and clinical without restrictions. Should pregnancy interfere with progress, students need to re-evaluate their choices.

Throughout the interviews, the College and nursing program administrators informed OCR that the College is in the process of updating and revising its general policies and the Nurse Handbook to ensure that they are in compliance with Title IX. The 2013-2014 Nurse Handbook posted on the College’s website, which states that it was revised in July of 2013, contains an almost identical statement, titled “Pregnant Students”, as the statement cited above.

The Title IX implementing regulation 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 academic, research, occupational training, or other education program or activity operated by recipients of Federal financial assistance from the Department. 34 C.F.R. § 106.31. The regulation, at 34 C.F.R. § 106.40(b), also prohibits recipients from discriminating against a student or excluding the student from its education program or activity on the basis of the student's pregnancy, childbirth, and/or recovery from pregnancy. In addition, the regulation, at 34 C.F.R. § 106.40(a), prohibits a recipient from applying any rule concerning a student's parental, family, or marital status which treats students differently from other students on the basis of sex.

A recipient may require a pregnant student or student who has given birth to submit medical certification for academic participation only if the recipient also requires such certification from all students with physical or emotional conditions requiring the attention of a physician. 34 C.F.R. § 106.40(b)(2). A student who has been hospitalized due to childbirth, for example, should not be required to submit a medical certificate for reentry to the academic program if a certificate is not required of a student who has been hospitalized for other types of medical treatment.

To ensure a pregnant student's access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. See OCR's Pamphlet: *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*, June 25, 2013 at: <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html>.

The Title IX implementing regulation, at 34 C.F.R. § 106.40(b)(5), further states, in relevant part, that, in the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

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

With respect to grievance procedures, the Title IX implementing regulation, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. OCR examines a number of elements when evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for:

1. notice of the procedure, including where complaints may be filed;
2. application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;
3. adequate, reliable, and impartial investigation of complaints;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. notice to the parties of the outcome of the complaint; and
6. an assurance that the recipient will take steps to prevent recurrence of any sex discrimination found to have occurred, and to correct any discriminatory effects on the grievant and others, if appropriate.

Grievance procedures may include informal mechanisms for resolving sex discrimination complaints to be used if the parties agree to do so. OCR has frequently advised recipients, however, that it is not appropriate for a student who is complaining of discrimination or harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the school (e.g., participation by a counselor, trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis.

As noted above, prior to OCR's completion of its investigation of the allegations in this matter, the College expressed interest in resolving these allegations pursuant to Section 302 of the *Manual*. The *Manual* provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of the College, nor does it constitute a determination by OCR that the College has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

The College has signed the enclosed resolution agreement, which, once implemented, will fully address all of the complaint allegations in accordance with Title IX. The resolution agreement requires the College to:

- notify students and employees of the College's Title IX coordinators and their contact information;
- revise its policies and procedures related to sex discrimination and harassment and pregnancy discrimination;
- adopt, implement, and publicize the revised policies and procedures; and
- train relevant staff on the revised policies and procedures.

This concludes OCR's investigation of the complaint and 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.

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 harmed individual may file another complaint alleging such treatment.

We appreciate the cooperation of the College staff during the investigation and resolution of this complaint. The OCR contact person for the monitoring of the agreement is OCR senior attorney Ann Millette, who may be reached at XXXX or at XXXX. We look forward to receiving the College's first monitoring report by August 30, 2013. The report should be directed to Ms. Millette.

If you have any questions about this letter or OCR's resolution of the case, please contact Ms. Brenda Redmond, Acting Team Leader, at XXXX or at XXXX.

Sincerely,

Catherine D. Criswell
Director

Enclosure

cc: XXXX
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