



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV
MICHIGAN
OHIO

December 24, 2015

Paul W. Coughenour, Esq.
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226

Re: OCR Docket #15-14-2244

Dear Mr. Coughenour:

This letter is to notify you of the disposition of the above-referenced complaint filed on September 19, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR) against Macomb Community College (the College), alleging that the College discriminated against a student (the Student) based on his race (African American) and sex (male). Specifically, the complaint alleged that: (1) from approximately xxxxxxxx xx xxxx xxxx, the Student's xxxxxxxx xxxxxxxx instructor (the instructor) failed to provide the Student with the same academic assistance as was provided to a white female student in the class; (2) the Student received a failing grade in the xxxxxxxx xxxxxxxx class in xxxx xxxx due to his race and sex; and (3) the College failed to respond to the Student's xxxxxxxxxxxx xxxx complaint alleging sex discrimination by the instructor.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal 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), 20 U.S.C. §1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits 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 these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated whether the College:

- 1) on the basis of race or color, subjected a student to different treatment in violation of Title VI's implementing regulation at 34 C.F.R. § 100.3;

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- 2) on the basis of sex, subjected a student to different treatment in violation of Title IX's implementing regulation at 34 C.F.R. § 106.31;
- 3) failed to promptly and equitably respond to a complaint alleging discrimination on the basis of sex, in violation of the Title IX implementing regulation at 34 C.F.R. § 106.8(b); and
- 4) failed to adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action in violation of Title IX as required by the Title IX implementing regulation at 34 C.F.R. §106.8(b).

During our investigation, OCR reviewed documentation provided by the Student and the College, as well as conducted interviews with the Student and members of the College's staff. Additionally, OCR provided the Student an opportunity to respond to information provided by the College.

After carefully reviewing this information, OCR has determined that the evidence is insufficient to support a finding that the College subjected the Student to different treatment on the basis of race or sex, or that the College failed to equitably respond to the Student's complaint alleging discrimination on the basis of sex. OCR determined, however, that the College failed to promptly respond to the Student's complaint alleging discrimination on the basis of sex. In addition, OCR found that the College failed to adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action in violation of Title IX as required by the Title IX implementing regulation at 34 C.F.R. §106.8(b); however, prior to receiving a signed resolution agreement, the College corrected its Civil Rights Compliance Procedure to ensure that it is compliant with 34 C.F.R. § 106.8(b). Furthermore, the College signed a resolution agreement addressing the remaining compliance concerns.

Alleged Race and Sex Discrimination

- **Applicable Regulatory Standards**

The Title VI implementing regulation, at 34 C.F.R. 100.3(a), states 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 subjected to discrimination under any program or activity receiving Federal financial assistance. The Title VI regulation at 34 C.F.R. § 100.3(b)(1)(i) and (ii) specifically prohibits recipients from, on the basis of race, color, or national origin: denying students any service or benefit provided under the program; or providing services or benefits that are different from or provided in a different manner from services or benefits provided to other students.

The Title IX implementing 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. The Title IX implementing regulation at 34 C.F.R. § 106.31(b)(2) and (4) prohibits recipients from, on the basis of sex, providing different aid, benefits, or services or providing aids, benefits, or services in a different manner, or subjecting any person to separate or different rules of behavior, sanctions, or other treatment.

In determining whether discrimination against a student based on race or sex has occurred, OCR analyzes whether the decision maker at issue was aware of the student's race or sex and whether the recipient acted, at least in part, because of the student's race or sex. Evidence of discriminatory intent may be direct or circumstantial and may be found in various sources, including statements by the decision maker, the historical background of the events at issue, the sequence of events leading to the action(s) at issue, a departure from standard procedure, or a past history of discriminatory conduct.

Absent direct proof of discriminatory motive, OCR looks to whether there were any apparent differences in the treatment of similarly-situated students on the basis of race or sex. If so, OCR assesses the recipient's explanation for any differences in the treatment of similarly-situated students to determine if the reasons are legitimate or are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with its established policies and procedures and whether there is any other evidence of discrimination based on race or sex.

- **Summary of OCR's Investigation**

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The Student has been enrolled at the College since fall of 2013. The College offers course xxxx-xxxx, xxxxxxxx xxxxxxxx (the course). The Student enrolled in one of the two sections of the xxxxxxxx xxxxxxxx course (the course) offered in the xxxxxxx xxxxxnterm, taught by the instructor. The College submitted a copy of the syllabus for the course, which states that the course covers essential college skills such as: time management, test taking, note taking, thinking and reasoning, managing stress, and work-life balance. In addition, the course teaches effective ways of accessing information from various campus resources such as the library, learning center, and academic advising as well as identifying personality strengths, weaknesses, and interests to explore possible career paths.

The course was graded on a 1,000-point system, with 60% being the minimum to attain for a passing grade. The course syllabus included a detailed list of the assignments, tests, and other items required during the semester and the due dates and point values for each.

The course syllabus included a detailed list of the assignments, tests, and other items required during the semester and the due dates and point values for each. The syllabus listed the following:

- Ten technology lesson activity and reflection assignments, each worth up to 15 points, for a total possible 150 points.
- Eight campus exploration assignments, each worth up to 15 points, for a total possible 120 points.
- Eight book reading and discussion activities, each worth up to 15 points, for a total possible 120 points.
- Twelve chapter reflection assignments, each worth up to 15 points, for a total possible 180 points.

- An investigation project, broken up into four assignments (a project proposal, a plan with pictures, a poster, and a presentation), each worth up to 40 points, for a total possible 160 points.
- Three tests, each worth up to 50 points, for a total possible 150 points.
- Three binder and calendar checks, each worth up to 40 points, for a total possible 120 points.

The Student asserted that the class was originally comprised of 23 students, but that as the semester passed the number of students in the class decreased to four students. The Student further alleged that the remaining students were three African American males, including the Student, and one white female student. The Student also alleged that, during the course of the semester, the instructor was treating the African American male students differently than the white female student after the class had decreased to the four remaining students. As one example of the alleged different treatment, the Student told OCR that the instructor would not answer the questions of the African American male students, but would answer questions of the white female student; or when the instructor would respond to questions from African American students she would do so differently than she would respond to questions from the white female student. The Student also alleged that the instructor told the African American students that she would not help them with their work, but the instructor would help the white female student with her work.

Also, the Student alleged that the instructor had sent an e-mail instructing students to submit their investigation project posters to the library by xxxx x xxxx. The Student stated that he took his poster to the library on xxx x, but was told by a librarian that he would have to take his project to the College's "Center Campus," because the instructor had already transported the posters and his poster was late. He said that, after he took his poster to Center Campus, the instructor allowed a female student to present her poster project, although she would have been late too. He said the instructor said nothing to that female student about turning her poster in late. With regard to this example, OCR noted that, when during an interview OCR asked the Student the race of this female student, the Student described her as "brown-skinned."

The Student further alleged that on xxx x xxxx, the instructor had the white female student stay after class to help her study for the final exam, but the instructor told the African American students that she would not help them study for the final exam.

The Student also asserted that the instructor could not keep track of the assignments he turned in and that he had turned in his Gmail assignment (which was one of the technology lesson activity and reflection assignments listed on the syllabus) but the instructor did not have it recorded in her book. He said that, when he asked her about it in xxxxxxxx xxxx, she directed him to redo it, but then, at the end of xxxxxxxx xxxx, he realized that she only gave him half the credit, stating that it was late. He confronted her about it at the time and revisited the issue in a later confrontation he had with her.

The Student also alleged that he received a failing grade in the course in xxxx xxxx due to his race and sex. The Student stated to OCR that the other African American male students in the

class received a failing grade in the class as well; however, the white female student passed the class.

The Student stated that he told the College that there could only be two reasons for him receiving a failing grade in the class: (1) not turning in work; and/or (2) not actively participating in class. The Student stated that neither of those scenarios was true. Also, during an interview with OCR, the Student stated that he did the same amount of work in the class as the white female student, but he received a failing grade and she received a passing grade.

The College submitted documentation to OCR indicating that there were 14 students who enrolled and remained in the section of the course the Student was enrolled in for xxxxxxxx xxxx. There were 9 male students and 5 female students.

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The College denied that the instructor discriminated against the Student on the basis of race or sex. The College asserted that the Student received a failing grade in the course because he failed to perform many of the required class assignments, performed poorly on many of the class assignments he completed, and was late and presented poor quality work on the required project. In addition, the College provided documentation of the Student's performance on the course assignments, projects, and tests establishing that the Student received a failing grade in the course based on his failure to complete many course requirements and his poor performance on much of the work that he did complete. The College's documentation indicated that the Student's overall course score was calculated according to the point system laid out in the syllabus.

[xxx---paragraph redacted---xxx]

The College further asserted that passing and failing grades were similarly balanced among male and female students and students of different races in the instructor's other section of the course for the xxxxxx xxxx term. Finally, the College asserted that the Student's failing grade in the course was consistent with his academic performance throughout his enrollment at the College. The College submitted documentation showing that the Student has failed several other courses and that his cumulative grade point average is x.xxx.

OCR interviewed the instructor, who stated that she did not discriminate against the Student based on his race or sex. The instructor confirmed the College's assertion that the Student failed the class because of his poor performance on class assignments. She stated that the Student did not complete his assignments, including the required readings. She said that he did not have the textbook for the first half of the semester, and she made sure he had copies of some of the materials after she learned he had not yet purchased the textbook. She noted that his failure to do the required reading then affected his class participation. The instructor said that the Student received x xxxx for the book discussions because he did not participate in the discussions. She also stated that he was late in turning in his investigation poster project, did not meet the requirements for the project, and did not include source citations, which she noted amounted to plagiarism. These factors led to his low score on the overall project.

The instructor refuted the examples of different treatment and race and sex discrimination alleged by the Student. Specifically, the instructor stated that she did not refuse to help the African American male students in the class while offering help to the white female student. The instructor stated that whenever any student needed help she would stay after to help them. The instructor recalled the white female student often staying after class, and another African American student staying after class to ask about his grade and the poster project. Also, she said that she had never told any students she would not help them study for the final exam. She noted that she had advised all of the students to use “Cornell study notes”¹ to prepare for the final exam, and that the white female student had stayed after class on one occasion to show the instructor her “Cornell study notes.” Meanwhile, the Student was one of several students who admitted to her he had not prepared any “Cornell study notes.” She stated that the Student did not ask for her assistance in studying for the final exam. The instructor asserted that the difference in the grade received by the Student and the white female student was the result of the white female student turning in her assignments on time and performing well on the assignments, and the Student not turning all of his assignments in, turning several of his assignments in late, and submitting poor-quality work on the assignments he did turn in.

With respect to the Student’s assertions about the poster project, the College provided a statement explaining that there was a student fair held at the College’s library, at which the students from the class could display their posters. The College asserted that the Student arrived late to class with his poster, after other students had already turned their posters in, and those posters had already been delivered to the library for the fair. Because he was late, the instructor told him that, to receive additional points available for displaying the poster at the student fair, he would need to take the poster there himself. He was still permitted to present his poster in class for additional points after the fair.

[xxx---paragraph redacted---xxx]

With regard to the Student’s Gmail technology assignment, the instructor said that she did not lose his assignment, and that the Student had turned this assignment in late. The syllabus indicated this assignment was to be turned in by January 16. The instructor stated that the Student did not turn it in until April 1. She gave him half credit for the assignment because he submitted it late. Also, she explained that all of the students were to turn their assignments in at the front of class, in a folder, and asserted that she never lost any student’s assignments. As indicated above, the College submitted documents that showed that the Student missed numerous assignments, and received low marks on many assignments he did turn in to the instructor.

OCR provided the Student an opportunity to respond to information submitted by the College. When asked about the College’s documentation that showed that there were 14 students that finished the class and not 4 as the Student had claimed, the Student asserted that there were only 4 students showing up for class regularly, and that the number of students enrolled is a different thing than the ones who were actually attending class.

¹ The Cornell note-taking system was devised in the 1950s by Walter Pauk, an education professor at Cornell University, who advocated its use in his book *How to Study in College*.
https://en.wikipedia.org/wiki/Cornell_Notes

With regard to the poster project, the Student submitted follow-up information to OCR by e-mail. He forwarded the e-mail from the instructor to the class dated xxxxx xx xxxx, mentioned above, in which the instructor told the class they could submit their poster boards to the library until xxx x. The Student asserted that the instructor's e-mail did not say his poster board was late. OCR notes the e-mail in question was sent before the poster board would have been late.

With respect to the information the College provided that showed that the reason the Student failed the course was due to his performance in class, the Student generally denied missing assignments and stated he did not agree with the grades he was given by the instructor. The Student confirmed he was late to class for the first few weeks of the semester because he was taking another class on another campus that overlapped in time. Specifically with respect to the information from the College that he missed assignments because he did not have his book for a portion of the class, the Student said that he did not agree with the grade because he did the book assignments. He stated the book assignments were group projects, and he said that he was only missing his book for one week of the semester and that he participated in the group discussions. With respect to the information that the instructor helped the Student by giving him copies of the book material because she learned that he was missing assignments because he did not have the book, the Student admitted that the instructor gave him copies; he indicated they came from the white female student's book.

- **Analysis**

In the instant case, the Student alleged that the instructor subjected him to discrimination based on his race and his sex by treating him differently in the class than she treated a white female student, and by giving him a failing grade in the class. Specifically, the Student alleged that the instructor would not answer the questions of the African American male students, but the instructor would answer questions of the white female student, or when the instructor would respond to questions from African American students she would do so differently than she would respond to questions from the white female student. The Student also alleged that the instructor told the African American students that she would not help them with their work, but the instructor would help the white female student with her work. OCR interviewed both the instructor and the Student, and both gave opposing views of the alleged incidents. While the Student asserted that the instructor refused to help the African American students in the class with their work and exams, the instructor denied such refusals, and the instructor stated that anytime a student needed assistance she would stay after class to help, but the Student never stayed for help. Also, the Student admitted that the teacher gave him assistance by attaining copies of the book for the Student.

The Student asserted an incident regarding the class poster project as another example of alleged different treatment. First, although he had alleged he was treated differently from a white female student in the class, and that the class by the time of the events at issue consisted of only the Student, two other African American male students, and the white female student, the female student he provided as a comparator for the poster project incident was African American. Also, the evidence supports that the Student was late in turning in his project to the library and therefore had to deliver his poster to a different location. The evidence indicates the other student was not similarly situated to the Student, in that her poster was not late. However, she

did lose points for not presenting her poster at the fair. Moreover, the Student was permitted to present his poster at the fair and to earn points for presenting it in class.

The Student further alleged that the instructor had the white female student stay after class to help her study for the final exam, but the instructor told the African American students that she (the instructor) would not help them study for the final exam. The instructor denied refusing to help African American students study for the final exam, while helping the white female student study for hers. The instructor admitted staying after class with the white female student because the white female student wanted help with her “Cornell study notes.” The instructor stated that the Student did not ask the instructor for help, and she would stay after to help any student that asked for help. In addition, the instructor indicated that the Student admitted to her that he did not even prepare any “Cornell study notes” for the final.

OCR did not obtain evidence indicating the Student was treated differently from other students by the instructor as alleged. Therefore, based on the above, OCR finds the evidence is insufficient to conclude that the Student was discriminated against based on his race or sex with respect to the allegation of different treatment.

The Student also alleged that he received a failing grade in the class based on his race or sex. He noted that the white female student received a passing grade, even though she had done the same amount of work in the class as he had, and claimed that all of the other African American male students failed the course. He also asserted that he had participated in class and turned in his assignments, in arguing that his failing grade was inappropriate.

However, the College asserted that the reason the Student received a failing grade was because of his performance in the class and not his race or sex. The instructor provided credible, consistent information that the Student was significantly late to a number of class sessions, did not obtain the required course materials for part of the semester, did not complete several assignments, and completed assignments he did turn in late and without following requirements. The documents submitted by the College support that the Student missed a number of assignments in the class, and that the Student submitted work that did not receive full credit because it was late or done improperly.

The Student asserted that the instructor could not keep track of the assignments he turned in and that he had turned in his Gmail assignment but the instructor did not have it recorded in her book. However, the instructor stated that she did not lose the Student’s Gmail assignment, but that the Student received partial credit for the assignment because the assignment was turned in late, and the records submitted by the College support the instructor’s statement. Moreover, this assignment was worth only 15 of the 1,000 total points for the course, and even if the Student’s assertion had been true his failing grade was not a result of his score on just this one assignment.

With regard to the instructor’s recollection that the Student did not obtain the required course materials, the Student stated that he was only missing the book for one week and also asserted that he did participate in all of the book discussions. The Student did acknowledge he was late to the first several weeks of class due to a course scheduling conflict.

OCR did not find any documentation that would dispute the documents submitted by the College, which show that the Student failed the class due to his performance. Although the Student generally asserted that he did not agree with the scores he was given on assignments, and that he did the assignments, he did not provide documentation or other detailed information supporting these assertions. The Student's unsupported statements are insufficient to outweigh the documentation submitted by the College that shows that the Student's performance on class assignments was poor and that he was missing several assignments. The College further provided documentation supporting that the Student's failure in this course was consistent with his performance in other courses with other instructors throughout his enrollment at the College.

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The evidence does not support that the instructor gave the Student a failing grade because of his race or sex. Rather, the evidence supports that the Student received a failing grade in the course due to his performance on assignments in the class. Therefore, OCR finds no evidence that the Student was discriminated against based on his race or sex with respect to this allegation.

Alleged Failure to Respond to Sex Discrimination Complaints

- **Applicable Regulatory Standards**

The Title IX 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 sex discrimination. In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

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

A grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities. The school must notify all of its students and employees of the

name, office address, and telephone number of the employee or employees designated. While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sex discrimination complaints to ensure consistent practices and standards in handling complaints. Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sex discrimination and are able to explain how the College's grievance procedure operates.

- **Summary of OCR's Investigation**

- **The Student's Title IX Complaint to the College**

The Student stated that on xxxx xx xxxx, he contacted a dean with "grievances" about his grades in the xxxxxxxx xxxxxx course (the course) and the instructor. He said that the dean contacted him two days later with further information about his grades. He alleged that he noted several discrepancies in the information and that he submitted a complaint to the College dated xxxxxxxxxxxx xx xxxx, titled "Affidavit of Title IX Violation." The affidavit alleged that the instructor had caused a hostile educational environment based on sex for him and other students in the course. The Student alleged that the College did not respond to his Title IX complaint.

The College submitted to OCR a copy of an e-mail the Student sent to the College's associate dean of xxxxxxxxxxxx xxx xxxxxxxxxxxxxxxxx on xxxx xx xxxx, with the subject header "Problem With My xxxx Teacher and Grade." The e-mail stated the Student was disputing his grade, although at the end of the e-mail the Student included statements that each male student in the class was given a failing grade and that the instructor often addressed the concerns of a female classmate. The College asserted that the associate dean did not view this e-mail as a discrimination complaint but rather as a grade dispute and therefore referred him to the College's grade appeal process on the College's website.

The College also provided a copy of an e-mail the Student sent on xxxxxxxxxxxx xx xxxx, to the associate dean, the dean of student success, the president of the College, the director of financial aid, and others, titled "Notice of Title IX Complaint Filing." Attached to the e-mail was the affidavit described above. Then on xxxxxxxxxxxx xx xxxx, the Student filed his complaint with OCR.

The College's Title IX coordinator stated to OCR that the College's general counsel forwarded her the Student's Title IX complaint on xxxxxxxxxxxx xx xxxx, and that she assigned it to a deputy Title IX coordinator (the deputy coordinator) for investigation on xxxxxxxxxxxx xx xxxx.

The deputy coordinator stated to OCR that she attempted to contact the Student, but there was no contact information provided in his complaint. OCR notes that the Student's e-mail address was present in his cover e-mail he submitted with his complaint to the College; however, it is unclear whether this was forwarded to the deputy coordinator. The deputy coordinator said she accessed the College's student data system to attain the Student's contact information, and called the listed telephone number and left two messages, on xxxxxxxxxxxx xx xxxx, and xxxxxxxxxxxx x xxxx. The deputy coordinator also stated that she did obtain the Student's e-mail and mailing addresses

from the student data system, but she did not contact him through those methods because she believed the sensitive nature of the matter “deserved a phone call.” The deputy coordinator said that she would have held the complaint as “inactive” (still open) when she did not hear back from the Student, but she did nothing else with it because she had not heard back from the Student. The deputy coordinator stated that this case had been “a learning lesson” for her, and that things have changed since that time regarding how the College handles Title IX complaints. Now, if she could not get in contact with a student complainant, she would continue with the investigation with whatever information she has available.

On December 10, 2014, OCR issued written notice to the College of this OCR investigation. On xxxxxxxx xx xxxx, the Title IX coordinator contacted the Student, via e-mail, and gave him the deputy coordinator’s direct telephone number and asked him to make contact with her. The Student contacted the deputy coordinator in response, and she then continued with the investigation. Then on xxxxxxxx x xxxx, the deputy coordinator sent an e-mail to the Student asking him to meet with her to discuss the complaint on xxxxxxxx xx xx xxxxxxxx xx xxxx. She also informed the Student that the College would “review the OCR dispute resolution process” and might follow that process. The Student replied via e-mail on xxxxxxxx xx xxxx, stating that he was apprehensive about meeting in person and that it might be “mutually beneficial” to “wait for” OCR to “assign a mediator.”

On xxxxxxxx xx xxxx, the deputy coordinator interviewed the instructor and the associate dean as part of her investigation of the Student’s complaint. The deputy coordinator requested documents from the associate dean. The deputy coordinator said that since the Student said that he would feel more comfortable if OCR “mediated,” she just “held everything.” The deputy coordinator said that “out of courtesy” for the Student she had not written her report.

When provided the opportunity to respond to the information submitted by the College, the Student confirmed that the College had sent him an e-mail in xxxxxxxx xxxx following up on his complaint, but denied receiving the described telephone calls from the deputy coordinator in xxxxxxxxxxxx xx xxxxxxxx xxxxxx.

Prior to OCR’s completion of the investigation, on xxxxxxxx xx xxxx, the College’s Title IX coordinator issued a letter to the Student on his complaint, finding that the instructor had not violated Title IX. The letter gave the basis and the reasons for the finding. The letter stated that a College policy titled "Policies and Procedures for Responding to Reports of Sexual Harassment and Sexual Misconduct" was applied to the complaint. The letter stated that the College had invited the Student to participate in the investigation, but he did not.

During its investigation the College interviewed the associate dean, the instructor, and three students from the same section of the course as the Student, who the Student identified in his complaint. In addition, the College stated that it reviewed the Student’s record in the course, along with records of each student participating in the instructor’s same courses for xxxxxxxx xxxx semester, to determine whether or not there was any evidence of a systemic bias by the instructor.

The College stated that during its interviews of the three students, two of the students reported that they did not witness or experience any discriminatory practices by the instructor. One student stated that they believe the Student "harassed" the instructor through his in-class conduct. A third student supported the Student's claims, and asserted that the instructor failed all of the African American students in the course. The College stated that it investigated this claim, and found it was without merit.

[xxx---paragraph redacted---xxx]

The College also reviewed the grades of all the assignments in the course, and confirmed that the Student received a failing grade. The College stated that the reason it appears that the Student did not pass the class was because he "failed to perform many of the required class assignments or performed poorly on many of the class assignments that were completed."

The College concluded that based on the results of this investigation, and utilizing a preponderance of the evidence standard, the evidence did not support the Student's claim that the instructor violated the College's Title IX policy. The letter provided information about how the Student or the instructor could appeal the finding.

On xxxxxx xx xx xx xxxx, the Student responded to the Title IX coordinator by e-mail objecting to the College's findings, although indicating that he had not decided whether to submit an appeal.

- **The College's Title IX Grievance Procedures**

In response to OCR's request for a copy of the College's policies and procedures in effect during the 2013-2014 academic year that address discrimination based on sex, the College submitted a copy of its 2014-2015 Handbook on Rights and Responsibilities (handbook), which it stated included its Title IX complaint procedure. OCR reviewed the handbook, and found that it contained several different complaint procedures. One of the complaint procedures was titled "Civil Rights Complaint Procedure," and referenced Title IX, among other federal and state civil rights laws. This complaint procedure indicated it applied to complaints alleging violations of Title IX, including complaints against employees, students, or third parties. The procedure listed three "Civil Rights Coordinators" to whom complaints could be made, depending on the type of complaint, none of which were the College's identified Title IX coordinator. The procedure set out the College's investigative process, including the opportunity for the complainant to identify witnesses and other evidence. The procedure did not provide an opportunity for the respondent to identify witnesses and other evidence, however. The procedure set forth timeframes for the investigation process, and included a provision for written notice to the parties of the outcome. The procedure also included an assurance that the College would take steps to prevent recurrence of any violation and to correct any discriminatory effects on the complainant and others, if appropriate. The procedure included a statement that a complainant may file a complaint with OCR, but provides an outdated mailing address for OCR Cleveland. As of August 2015, this version of the handbook and the "Civil Rights Complaint Procedure" was posted on the College's website.

In addition to the version of the “Civil Rights Complaint Procedure” that appeared in print and on the College’s website as part of the 2014-2015 handbook, there was a second version of the “Civil Rights Complaint Procedure” posted on the College’s website at <http://www.macomb.edu/about-macomb/college-policies/administrative/civil-rights.html> as of August 2015. This version was dated September 23, 2014, and included the Title IX coordinator as the Civil Rights Coordinator for Title IX complaints. This document included the Title IX coordinator’s full contact information, including a mailing address. The actual complaint procedure described was the same as the handbook version of the document, except this procedure stated only the complainant would receive written notice of the outcome of the investigation. This version stated that an OCR complaint could be filed with OCR headquarters in Washington, D.C., and did not include mention of OCR Cleveland.

When OCR interviewed the College’s Title IX coordinator, OCR asked her to identify the College’s Title IX grievance procedure; she referred OCR to the web page www.macomb.edu/titleIX. OCR accessed this link, which led to a page titled “Title IX.” At this main web page, the Title IX coordinator was listed as the sole person with whom a Title IX complaint may be filed. Her contact information was provided except for a mailing/street address.

OCR reviewed the information available at the web page identified by the Title IX coordinator and found that it all related to sexual misconduct and sexual harassment, including the document titled “Policies and Procedures for Responding to Reports of Sexual Harassment and Sexual Misconduct” referenced in the investigation findings letter the Title IX coordinator issued to the Student as described above (the policy), a page titled “How to File a Complaint,” and a complaint form titled “Sexual Harassment/Sexual Misconduct Complaint (Title IX).” The Title IX coordinator asserted to OCR that the policy at the website covered all forms of sex discrimination, and directed OCR to the second paragraph of the policy:

Macomb Community College (“College”) is firmly committed to maintaining a campus environment free from discrimination based upon sex (*sic*), including misconduct. Sexual misconduct will not be tolerated by the College and is expressly prohibited. The College has jurisdiction to investigate and take certain actions with respect to reports of sexual misconduct and retaliation covered by this Policy. Persons covered by this Policy who engage in sexual misconduct and/or retaliation may be subject to discipline. In addition, the College may take steps to prevent the recurrence of any sexual misconduct and remedy the discriminatory effects on the Complainant and others, if appropriate.

However, the next section of the policy, titled “Policy Coverage,” stated:

This policy covers sexual misconduct and retaliation in connection with reports of possible sexual misconduct made under this Policy. Sexual misconduct encompasses a range of behaviors that can create a hostile educational environment, including sexual assault and sexual harassment.

The College’s Title IX web page did not include any reference that OCR could find to the “Civil Rights Complaint Procedure.”

The Title IX coordinator did not seem to be aware of the College’s “Civil Rights Complaint Procedure” and seemed to be solely referring to the policy on sexual misconduct and sexual harassment. She stated that she is responsible for receiving Title IX complaints from campus, and reviewing them to determine “whether an investigation is warranted.” If it is, then she forwards the complaint to one of two deputy coordinators for investigation. Once the investigation is complete, the deputy coordinator reports back to her and she reviews the determination to see if she agrees. If she does, she reports the findings to the parties, in writing. If she disagrees, she sends the findings back to the deputy coordinator with her concerns and meets with the deputy coordinator to discuss.

- **Analysis**

The Student alleged that the College failed to respond to his xxxxxxxx xxxx complaint alleging sex discrimination (different treatment based on sex). The College stated that, upon receipt of the Student’s complaint, the College twice attempted to contact the Student by phone; however, the College did not receive a response from the Student. The deputy coordinator admitted to having the Student’s mailing address and his e-mail address, but decided not to contact the Student in writing. Also, the College admitted putting the investigation on hold because it could not get in touch with the Student by phone. Then, when OCR notified the College of the Student’s OCR complaint on December 10, 2014, the College’s Title IX coordinator and deputy coordinator made written contact with the Student and the deputy coordinator asked to meet with him. The Student responded to these written communications, but did not agree to meet with the deputy coordinator.

[xxx---paragraph redacted---xxx]

After the College initiated its investigation in xxxxxxxx 2015, it rendered its decision on the matter seven months later. Therefore, in this case, the College did not provide the Student a reasonably prompt complaint process, in violation of the Title IX regulation at 34 C.F.R. § 106.8(b). The College did, however, in completing its investigation, otherwise follow the requirements of the Title IX regulation with respect to its handling of the Student’s complaint. It thoroughly investigated the complaint, including interviewing witnesses identified by the Student, and applied appropriate legal standards. The College issued written notice of the outcome to the parties.

Although the evidence supports that the College eventually properly investigated and responded to the Student’s Title IX complaint, during the course of the investigation OCR discovered that the grievance procedure the College applied, which was posted on its website, only addressed sexual misconduct, but failed to address other types of sex discrimination. However, the College’s Civil Rights Complaint Procedure, which the Title IX coordinator did not seem to be aware of or using, did apply to all types of sex discrimination, such as the different treatment allegation made by the Student. There appeared to be three different and conflicting published College procedures that on their face applied to Title IX complaints. The College did not provide clear notice that one applied to sexual harassment while the other applied to all other types of sex discrimination. The published procedures stated conflicting information about to whom at the College complaints should be made. One version of the Civil Rights Complaint

Procedure did not equitably provide written notice of the outcome to both parties and the other version did not equitably provide both parties the opportunity to identify witnesses and other relevant evidence.

On September 23, 2015, OCR notified the College that it had failed to adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action in violation of Title IX implementing regulation at 34 C.F.R. § 106.8(b), and proposed a resolution agreement to resolve this, among other issues. On December 17, 2015, the College provided a revised version of its Civil Rights Complaint Procedure that now clarifies that it applies to sex discrimination, except for sexual harassment and sexual violence. In addition, the revised procedure clarifies that complaints of sexual harassment and sexual violence are governed by the College's "Policies and Procedures for Responding to Reports of Sexual Harassment and Sexual Misconduct." OCR notes the College's separate policies and procedures regarding sexual harassment and sexual misconduct were not relevant to the instant complaint and therefore are not addressed by this letter. OCR reviewed the College's Civil Rights Complaint Procedure revised on December 17, 2015, and determined that it complies with the Title IX implementing regulation at 34 C.F.R. § 106.8(b).

Conclusion and Resolution

Based on the foregoing, OCR concludes that there is insufficient evidence to support a finding that the College: (1) subjected the Student to different treatment based on race or sex with respect to the course; or (2) gave the Student a failing grade in the course due to his race and sex.

However, OCR concludes that there is sufficient evidence to support a finding that the College failed to promptly respond to the Student's sex discrimination complaint in violation of Title IX implementing regulation at 34 C.F.R. § 106.8(b). OCR also found that the College had failed to adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action in violation of Title IX implementing regulation at 34 C.F.R. § 106.8(b).

The College has revised its Civil Rights Complaint Procedure as of December 17, 2015, and the revised procedure complies with the requirements of 34 C.F.R. § 104.8(b). The College has signed the enclosed resolution agreement (Agreement), which, once implemented, will fully address OCR's Title IX compliance findings. The terms of the Agreement require the College to adopt and implement the OCR-approved revised Civil Rights Complaint Procedure, publish it on its website, and include it in its handbooks. The College will further review and, as appropriate, revise all of its existing policies and procedures that address discrimination on the basis of sex to ensure that they are consistent, or, to the extent necessary, withdrawn, so as to eliminate confusion for students and staff. The College will also notify staff, students, and faculty of where copies of the policies and procedures may be obtained. Finally, the College will provide training to all staff responsible for receiving and/or investigating complaints of sex discrimination that addresses the College's obligations pursuant to Title IX to promptly and equitably respond to complaints alleging sex discrimination and the College's procedures for doing so. The training will also specifically address the changes to the College's Civil Rights Complaint Procedure.

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. 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. A complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file another 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, 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.

If you have any questions about this letter or the resolution of the complaint, you may contact xxxx x xxxx, Supervisory Attorney/Team Leader, by telephone at (216) xxx xxxx. For questions about implementation of the Agreement, please contact xxx xxxxxx, who will be monitoring the College's implementation, by telephone at (216) xxx xxxx or by e-mail at xxx xxxxxx@ed.gov. We look forward to receiving the College's first monitoring report on **May 31, 2016**.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure