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January 23, 2012

Mr. Cesar A. Perez  
Equal Employment Practices Commission  
40 Rector Street, 14<sup>th</sup> Floor  
New York, New York 10006

**Re: Resolution #11/27-042 (BMCC) Audit Re: Preliminary Determination Letter Pursuant to the Audit of Compliance by Borough of Manhattan Community College with its Affirmative Action/Equal Employment Opportunity and Diversity Policy from July 1, 2007 to June 30, 2010.**

Dear Mr. Cesar A. Perez:

I am in receipt of your preliminary determination dated December 15, 2011. Below is the Borough of Manhattan Community College's (hereinafter referred to as "BMCC") response to your preliminary determination letter.

**1. EEPC Recommendation**

The College should develop an AA/EEO and Diversity training plan to ensure that all individuals who work within the campus, including managers and supervisors, are trained concerning AA/EEO and Diversity-related policies, rights and responsibilities (CUNY, Policies and Procedures on Non-Discrimination and Sexual Harassment, p. 7, Sect III.2 and EEOC/ Sect. 831, City Charter).

**BMCC's Response**

BMCC values training its employees and supervisors on matters concerning EEO and diversity. Although the majority of the campus' training has dealt with sexual harassment, the college has begun expanding its training program to include other EEO/ diversity related topics. Since the audit period, BMCC has conducted the following trainings; Affirmative Action/ Basic EEO: Professional Development Workshop (employees)-December 3, 2010, Basic EEO training (employees)- March 10, 2011, Harassment-EEO Training (supervisors)-June 15, 2011 and Respectful Workplace: Preventing Harassment (Department Chairs)- October 25, 2011. See Attachment A.

BMCC will continue to conduct EEO and diversity training. Training sessions will be scheduled for the upcoming semester. In addition, the college is also exploring online training options to address the challenges of training a large workforce with varied schedules.

**2. EEPC Recommendation**

The complainant should be informed in writing that an investigation is being commenced, that interviews of the accused and possibly other people shall be conducted, and that the President shall determine what action, if any, to take after the investigation is complete. (CUNY, Policies and Procedures on Non-Discrimination and Sexual Harassment, Section III. 7b2, July 2010)

**BMCC's Response**

BMCC is in agreement with this recommendation and pursuant to CUNY's Procedures on Non-Discrimination and Sexual Harassment policy dated July 2010, will inform the complainant that an investigation has begun, interviews will be conducted and that the President will determine what action (if any) will be taken.

**3. EEPC Recommendation**

The accused should be advised that a complaint of discrimination has been received, that an investigation has begun, which may include interviews with third parties, and that the President shall determine what action, if any, to take after the investigation is complete. (CUNY, Policies and Procedures on Non-Discrimination and Sexual Harassment, Section III. 7b3, July 2010)

**BMCC's Response**

BMCC is in agreement with this recommendation and pursuant to CUNY's Procedures on Non-Discrimination and Sexual Harassment policy dated July 2010, will inform the accused that an investigation has begun, interviews will be conducted and that the President will determine what action (if any) will be taken.

**4. EEPC Recommendation**

Because the AA/CDO should report directly to the President (or to a direct report to the President), it is the Commissioner's position that appropriate documentation of meetings and other communications between the AA/CDO and the President regarding decisions that impact the administration of the college's EEO program be maintained. (Commission's Position and EEPC/Sect. 831, City Charter).

**BMCC's Response**

The college has agreed to implement this recommendation and going forward will maintain appropriate documentation of meetings and other communications between the Affirmation Action Officer and the President. BMCC reserves the right to determine what constitutes "appropriate documentation."

During our meeting with your agency's representatives on December 2, 2011, the scope of the required documentation was clarified. Documentation that is the focus of this recommendation is related to discussions on the impact or alterations of the administration of the college's EEO program, as opposed to discussions on individual cases under review.

#### **5. EEPC Recommendation**

Since it is the Commission's position that the college is responsible for ensuring compliance with all federal, state and local laws, as well as City and college policies, pertaining to persons, (i.e., employees) with disabilities, the college should develop a plan to demonstrate accessibility compliance for the three facilities. This plan should identify barriers and detail the efforts the college has taken to remove barriers. This plan will be reviewed during the compliance period. (Commission's Position and EEPC/ Sect. 831, City Charter, (ADAAG and Local Law 58).

#### **BMCC's Response**

In your agency's preliminary determination, it is noted that the facilities located at 70 Murray Street, 25 Broadway and 199 Chambers Street do not have low sinks or bathroom fixtures. Specific floors of these three facilities are then identified which your agency believes warrants corrective action.

It is BMCC's contention that developing a plan to demonstrate accessibility compliance, identifying barriers and then removing said barriers for its facilities is problematic for the college and therefore respectfully asks the EEPC to reconsider this recommendation.

First, the facilities located at 70 Murray Street and 25 Broadway are not owned by the University but are leased facilities. The college therefore has no authority to make alterations or renovations to these structures.

Second, with respect to 199 Chambers Street, this facility was built by the Dormitory Authority State of the New York (DASNY). Construction began in the 1970's, was interrupted and later completed in or about 1983. It is thus covered by New York Education Article 125-B § 6281 Municipal Regulation, which provides in part:

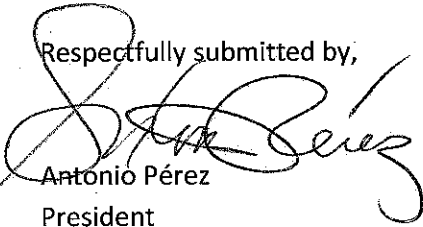
*"No county, town or village including but not limited to the city of New York shall have the power to modify or change the plans and specifications for facilities to be provided pursuant to agreement between the dormitory authority and the city university construction fund..."*

As you know, under the American with Disabilities Act, existing facilities that are grandfathered in must be made compliant only as the facility is renovated or altered. The college is in the process of making renovations to the bathrooms at 199 Chambers Street and has started the process of selecting an architect to do the design work.

The BMCC bathroom renovation project is a long term facilities renovation project, which will span multiple budget years. It is BMCC's plan, subject to financial ability to pay, to renovate the bathrooms at 199 Chambers Street. These renovations will be building wide compliant (meeting the American National Standards Institute's (ANSI) standards) at the time of their completion.

Overall, the college is committed to an EEO program that is in compliance with your agency's audit and I look forward to receiving your agency's response.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Antonio Pérez", is written over the printed name and title.

Antonio Pérez  
President