

March 1, 2019

Vita C. Rabinowitz, Ph.D.
Interim Chancellor
The City University of New York
205 East 42nd Street
New York, New York 10017

Re: Case No. 02-13-2010
City University of New York School of Law

Dear Interim Chancellor Rabinowitz:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the City University of New York School of Law (the School). The complainants (referred to individually as Students 1, 2, and 3) alleged that the School discriminates on the basis of disability because the School's main building (the Building) is not accessible to individuals with disabilities in the following manner: (a) the designated accessible doors at the main entrance to the first floor are not operational or are kept locked; (b) there is no accessible route to the ground floor from the accessible entrances on the first floor; (c) there is no signage designating the accessible route on the first floor; (d) the double-leaf interior doors located near the elevators, the bathroom doors, and the auditorium doors are too heavy; (e) the elevator car is too small to accommodate a wheelchair; (f) the interior doors that are operated by the student identification badge scanners are not accessible; (g) there is no accessible route to law clinics located on the fifth floor for non-students with mobility impairments; (h) Braille signage for the first floor bathrooms is not raised; and, (i) there is an insufficient number of wheelchair accessible spaces in the auditorium (Allegation 1). The complainants further alleged that the School failed to respond to complaints that Students 1, 2, and 3 filed in XXXXXXXXXX 2012, regarding the Building's physical accessibility (Allegation 2).

The complainants also alleged that the School discriminated against Student 1, on the basis of her disability, by failing to provide her with an effective note-taker during (a) the spring 2012 semester in the following courses: XXX and XXX XXXXXX XXXXXXXX XX, XXXXX XXXXXXXXXXXX, and XXX and XXXXXX XXXXXXXXXXXX; and, (b) the fall 2012 semester for the following courses: XXXXXXXXXXXXXXX XXXXXXXXXXX, XXXXXXXXXXXXXXXXXXX XXXXXXXXXXX, XXXXXXX, XXXXXXXXXXX XXXXXXXXXXX, and XXXXXXXX (Allegation 3). In addition, you alleged that the School discriminated against Student 2, on the basis of her disability, by failing to provide her with the approved auxiliary aid of remote captioning or remote Communication Access Realtime Translation (CART) reporting during the fall 2012 semester for the following courses:

XXXXXXXX; XXXXXXXX XXXXXXXXXX; XXXXXXXX XXXXXXXXXXXXXXX; and, XXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXX (Allegation 4). Further, you alleged that the School's Interim Dean of Students subjected Students 2 and 3 to harassment because of their disabilities, by yelling at them during a meeting on XXXXXXXXXX XX, 2012 (Allegation 5).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). Further, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The School is a recipient of financial assistance from the Department and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR reviewed information and documentation that the complainants, other witnesses, and the School submitted. OCR also interviewed Students 1 and 2, as well as School personnel; and, conducted on-site inspections of the Building. OCR made the following determinations.

Allegation 1: Building Accessibility

With respect to Allegation 1, the complainants alleged that the School discriminates on the basis of disability because the Building is not accessible to individuals with disabilities in the following manner: (a) the designated accessible doors at the main entrance to the first floor are not operational or are kept locked; (b) there is no accessible route to the ground floor from the accessible entrances on the first floor; (c) there is no signage designating the accessible route on the first floor; (d) the double-leaf interior doors located near the elevators, the bathroom doors, and the auditorium doors are too heavy; (e) the elevator car is too small to accommodate a wheelchair; (f) the interior doors that are operated by the student identification badge scanners are not accessible; (g) there is no accessible route to law clinics located on the fifth floor for non-students with mobility impairments; (h) Braille signage for the first floor bathrooms is not raised; and, (i) there is an insufficient number of wheelchair accessible spaces in the auditorium.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that “[n]o qualified person with a disability shall, because a recipient’s facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.” The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

OCR determined that the School occupies the first six floors of the Building, which is a fifteen-floor facility located at 2 Court Square, Long Island City, New York. Specifically, OCR determined that the School occupies part of Floor 1, and all of Floors 2 through 6. The School informed OCR that the base work for the Building, which includes the facility’s core and shell, was completed in 2006 and was designed to comply with the Americans with Disabilities Act Accessibility Guidelines

(ADAAG), as well as its amendments (1994). The School stated that Citigroup completed the infrastructure for Floors 2 through 6 in 2006, while Floor 1 remained unfinished space.

OCR determined that in 2011, the School entered into a condominium agreement with Citigroup to purchase part of Floor 1, and all of Floors 2 through 6, and began renovating components of the Building; the School completed the partial renovation in 2012. Relevant to the instant complaint, the School asserted that by February 2012, it altered its second floor auditorium to replace theater-style seating with fixed classroom desks and chairs, as well as wheelchair accessible desks. The School asserted that the changes to the auditorium, and the components of the Building that had not been altered since its construction in 2007 were designed to comply with the ADAAG. The School asserted that the remainder of the Building that was renovated in 2012 was designed to comply with the 2010 ADA Standards for Accessible Design (2010 ADA Standards). OCR determined that the School began moving into the Building in May 2012, and the move was completed by the beginning of the fall 2012 semester. The School advised OCR that during the course of OCR's investigation, it added an automated function to the double-leaf glass doors in the elevator vestibules located on Floors 2 through 6, in order to comply with the 2010 ADA Standards.

The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as "new construction." Accordingly, OCR determined that the Building is new construction under the regulation implementing Section 504. The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. The regulations specify the federal standard to be used in determining the accessibility of new construction and alterations. For facilities constructed or altered on or after January 18, 1991, and before March 15, 2012, the regulation implementing Section 504, at 34 C.F.R. §104.23(c), states that new construction must conform to the Uniform Federal Accessibility Standards (UFAS). For facilities constructed or altered on or after January 28, 1992, and before March 15, 2012, the regulation implementing the ADA, at 28 C.F.R. § 35.151, states that new construction must conform to UFAS or ADAAG. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards.

OCR made determinations as to whether the Building/facility elements at issue complied with ADAAG or 2010 ADA Standards, as applicable.

Allegation 1(a) – Floor 1 Main Entrance Lobby Accessible Doors

With respect to Allegation 1(a), the complainants alleged that the Building's designated accessible door, which is located in the main entrance lobby of Floor 1, is not operational or is kept locked. Specifically, the complainants alleged that: (i) the designated accessible door has an automatic door opener, but the door opener often malfunctions; and, (ii) the School must lock the designated accessible door during inclement weather to prevent it from becoming damaged.

During OCR's on-site inspections, OCR determined that the Building's main exterior door on Floor 1 consists of a revolving door flanked on either side by a single hinged glass door. The hinged door to the right of the revolving door (when facing the Building from the outside) is the Building's designated accessible door.

Regarding Allegation 1(a)(i), OCR determined that the accessible door is operated by automatic door openers controlled by push buttons, which are mounted on posts located near the door, both inside and outside of the Building. OCR found no evidence to substantiate that the push buttons on either the interior or exterior posts malfunctioned, as the complainants alleged.

With respect to Allegation 1(a)(ii), the School stated that the Building is open twenty-four hours each day. The School's Director of Public Safety (the Safety Director) stated that there are always two security guards stationed at the security desk within the lobby, directly in front of the all-glass main entrance, including the designated accessible door. OCR confirmed that the security personnel have a direct, unobstructed, and continuous view of the accessible entrance. The Safety Director acknowledged that during periods when weather conditions produce high velocity winds, security personnel lock the designated accessible door and the other hinged door, which is located to the left of the revolving door (when facing the Building from the outside). During such times, security personnel will manually open the accessible door from the inside to permit individuals to enter and exit the Building upon visually identifying the need to, or if an individual buzzes the security desk via the intercom. The Safety Director explained that the Building is located directly opposite a skyscraper, and the doors are located on the outside edge of an arc formed by the Building's structure, all of which produces a "wind-tunneling" effect, even under normal weather conditions. The Safety Director stated that door to the left of the revolving door is manually opened when both the accessible door and the door to the left of the revolving door are locked, because the door to the left of the revolving door is more shielded from the "wind-tunnel" effect.

The School estimated that between May 2012 and May 2013, the designated accessible door was inoperable on fewer than twelve occasions, for reasons of "imminent safety" due to the weather, possibly for an hour or a few hours each time. In addition, the Safety Director estimated that the designated accessible door may have been broken or damaged on five occasions between May 2012 and May 2013, for a couple of hours or days each time.

The School informed OCR that the Building has one other entrance. The Safety Director informed OCR that there is an entrance in the rear of the Building near the loading dock, but this is not used for public access.

Based on the foregoing, OCR determined that the Building's designated accessible door is accessible to individuals with disabilities. Although the designated accessible entrance is sometimes locked due to inclement weather, the School has a plan in place to ensure that security guards (who are located nearby) can see a person at the designated accessible door and can manually open, from the inside, the door to the left of the revolving door to allow a person to enter the building. An individual with a disability can also buzz the security desk for entry if the designated accessible door is locked due to inclement weather. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School discriminates on the basis of disability because the School's the designated accessible doors at the

main entrance to the first floor are not operational or are kept locked. Accordingly, OCR will take no further action regarding Allegation 1(a).¹

Allegation 1(b) – Direct Access from Floor 1 to Floor 6

Regarding Allegation 1(b), the complainants alleged that there is no direct access from Floor 1 to Floor 6. Specifically, the complainants stated that the main point of access from Floor 1 to Floor 2 is an escalator. Once on Floor 2, there is access to the four elevators that run between Floors 2 and 6, although one must use an escalator to get to Floor 2, which is not accessible to individuals with disabilities.

During OCR’s on-site inspections, OCR determined that the Building has one elevator car that runs from Floors 1 through 3 (and which stops at Floor 2); and, an additional four elevator cars that run from Floors 2 through 6. The School informed OCR that Floors 1 through 3 are “public floors” and Floors 4 through 6 are “private floors.” OCR determined that although the Building does not have an elevator that runs directly from Floors 1 through 6 (i.e., one must take the elevator from Floor 1 to Floor 2 or 3, exit, and take a second elevator from Floor 2 or 3 to Floor 6), Floors 4-6 are otherwise private and not open to the public. Further, while this process is possibly inconvenient, OCR determined that the 2010 ADA Standards do not require direct access in the manner described by the complainants. Further, OCR determined that this allegation does not otherwise constitute a compliance concern under the regulations that OCR enforces. Accordingly, OCR will take no further action regarding Allegation 1(b).

Allegation 1(c) – Floor 1 Accessible Route Signage

With respect to Allegation 1(c), the complainants alleged that there is no signage designating the accessible route on Floor 1. The 2010 ADA Standards do not require signage designating the interior accessible route within a facility. Further, OCR determined that this allegation does not otherwise constitute a compliance concern under the regulations that OCR enforces. Accordingly, OCR will take no further action regarding Allegation 1(c).

Allegation 1(d) – Double-Leaf Interior Doors Near Elevators, and Bathroom and Auditorium Doors

Regarding Allegation 1(d), the complainants alleged that the double-leaf interior doors located near the elevators, the bathroom doors, and the auditorium doors are too heavy, or require too much force to push or pull open. OCR conducted on-site inspections of all doors the complainants identified.

With respect to the double-leaf doors located near the elevators, OCR determined that there are elevator vestibules located on Floors 2, 3, 4, 5, and 6, that each has one set of double-leaf glass doors. During OCR’s first on-site inspection of the School, OCR determined that on every floor, there were doors that were too heavy (both pushing and pulling, using handles located on both sides of the door) and therefore did not comply with the opening force requirements of Section 404.2.9

¹ OCR provided technical assistance to the School regarding how to further ensure that its protocol for gaining entry to the Building during high wind conditions is widely publicized (e.g., through posted signage, e-mail notifications to students, faculty, and personnel, and including information on its website for visitors).

(Door and Gate Opening Force – Interior Hinged Doors and Gates) of the 2010 ADA Standards. During the course of OCR’s investigation, the School installed automatic door functionality to each of the double-leaf glass doors located in the elevator vestibules of Floors 2 through 6. During its second on-site inspection of the School, OCR determined that the automatic door functionality complies with Section 404.2.3 (Automatic and Power-Assisted Doors and Gates) of the 2010 ADA Standards. Accordingly, OCR has determined that this concern is resolved.

Regarding the bathroom doors, OCR determined that on all floors, Floors 1 through 6, the Building has Women’s, Men’s, and Unisex/Gender-Neutral bathrooms. OCR further determined that all of the bathroom doors are single-leaf hinged manual doors. During OCR’s first on-site inspection of the School, OCR determined that on every floor, there were doors that were too heavy to pull open (using lever handles located on the outside of the door), and therefore did not comply with the opening force requirements of Section 404.2.9 (Door and Gate Opening Force – Interior Hinged Doors and Gates) of the 2010 ADA Standards. The School asserted that during the course of OCR’s investigation, it altered the weight of the doors to come into compliance. During OCR’s second on-site inspection, OCR determined that the compliance concerns regarding opening force were resolved for the majority of bathroom doors previously identified, but that concerns regarding opening force requirements still remained for three bathroom doors, as detailed in the Appendix, attached.

With respect to the auditorium doors, OCR determined that the auditorium has six sets of double-leaf hinged manual doors, which have all been designated as “fire” doors and are subject to local building or other code requirements. The 2010 ADA Standards, at Section 404.2.9 (Door and Gate Opening Force) state that fire doors shall have a minimum opening force allowable by the appropriate administrative authority; and, it does not provide for any requirements regarding the opening force for fire doors. Accordingly, OCR determined that the portion of Allegation 1(d) pertaining to auditorium doors does not raise a compliance concern under the regulations OCR enforces.

Allegation 1(e) – Elevator Car Dimensions

With respect to Allegation 1(e), the complainants alleged that the Building’s elevator is too small to accommodate a wheelchair. As previously stated, OCR determined that there is one elevator car that runs from Floors 1 through 3, which also stops at Floor 2 (Elevator A); and, an additional four separate identical elevator cars that run from Floors 2 through 6 (collectively referred to as Elevator B).

Regarding Elevator A, OCR determined that the elevator door is a “side (off-centered) door.” OCR determined that the dimensions of Elevator A do not comply with the dimensions set forth for a “side (off-centered) door” car, or for an “any door” car, as required by Section 4.10.9 (Floor Plan of Elevator Cars) of ADAAG, as detailed in the Appendix, attached. Therefore, OCR determined that Elevator A is not wheelchair accessible.

With respect to Elevator B, OCR determined that the dimensions of each of the four identical elevator cars that run from Floors 2 through 6 comply with the “any door” requirements of Section 407.4.1 (Elevator Car Requirements – Car Dimensions) of the 2010 ADA Standards. Therefore,

OCR determined that Elevator B is wheelchair accessible; and, OCR will take no further action with respect to Elevator B.

Allegation 1(f) – Interior Elevator Bank Doors Operated by Student Identification (ID) Badge Scanners

Regarding Allegation 1(f), the complainants alleged that the interior doors that are operated by the student identification (ID) badge scanners are not accessible. Specifically, they alleged that when moving through doors separating the elevator banks on each floor to the rest of the floor, students, faculty, and staff must swipe their ID badges across a scanner in order to unlock the doors; however, the distance between the scanner and the door handles is too great, such that one cannot reach the door before it locks again. Therefore, the complainants also asserted that the timing of the ID badge scanners and the unlocking of the doors is insufficient for individuals with disabilities.

During OCR's first on-site inspection, OCR determined that the elevator banks on Floors 2 through 6, which correlate with the four elevator cars constituting "Elevator B", have ID badge scanners within the elevator bank vestibule, such that upon getting off of an elevator and exiting the elevator bank, one must scan an ID badge in order to gain access to the rest of the floor. OCR determined that during a meeting with the complainants and other individuals on September 13, 2012, the complainants raised this issue, along with other concerns regarding the Building's accessibility (see Allegation 5 below); and, the School informed the complainants that they would set the ID badge scanners to increase the amount of time the doors remained unlocked for a longer period of time. The Safety Director also informed OCR that the scanners were set to the manufacturer's default timing setting, which permitted the doors to remain unlocked for 5 seconds. He stated that immediately after the meeting on September 13, 2012, he adjusted the timing on the scanners, so that the doors would remain unlocked for approximately 12 seconds, which was the maximum permitted by the scanners.

The 2010 ADA Standards do not require a specific distance between the ID badge scanners and the door; nor do they require a specific timeframe for the door to remain unlocked after scanning an ID badge; however, during OCR's first on-site inspection, OCR assessed whether the timing of the ID badge scanners generally served to deny individuals with disabilities access to the Building. OCR determined that the Safety Director's adjustment in the timing of the ID badge scanners permitted the doors on Floors 2 through 6 to remain unlocked for approximately 10.5 to 12 seconds. OCR determined that because these timeframes permitted sufficient time for both individuals with and without disabilities to scan their ID cards, grasp the door handle, and open the door, the timing of the scanners did not serve to deny individuals with disabilities access to the Building. Moreover, during the course of OCR's investigation, the School moved the ID badge scanners closer to the double-leaf doors, and extended the amount of time that the now- automated doors remain open, to 6-7 seconds. Accordingly, OCR has determined that Allegation 1(f) has been resolved; and, OCR will take no further action regarding Allegation 1(f).

During the course of OCR's first on-site inspection, OCR determined that the School has one public courtesy telephone that is located within each of the elevator banks for Elevator B, located on Floors 2 through 6, which may be used to call Floor 1 lobby security personnel. Section 217.1 (Telephones – General) of the 2010 ADA Standards require that for one or more individual public

telephone units located on a floor, level, or exterior site, there must also be one public wheelchair accessible telephone unit. OCR determined that the height of the base for each of the telephones exceeds both the unobstructed side and forward reach ranges required by Section 704.2 (Telephones – Wheelchair Accessible Telephones) of the 2010 ADA Standards, as detailed in the Appendix, attached. Therefore, OCR determined that the telephones are not wheelchair accessible, as required by the 2010 ADA Standards.

Allegation 1(g) – Accessible Route to Floor 5 Law Clinics

With respect to Allegation 1(g), the complainants alleged that there is not an accessible route to the law clinics located on Floor 5 for individuals with disabilities, who are not School students, faculty, or staff, because the accessible route requires an individual to scan a School-issued ID badge in order to gain entry. The School informed OCR that the law clinics are not open to the general public. Rather, the School stated that it requires that clients served by the clinics to be seen by appointment; and, that clients are escorted to and from the main lobby by a student or School personnel upon arrival and departure. As such, clients use the same access routes as students and School staff. The School asserted that, therefore, clients of the law clinic are not required to use a School-issued ID badge to access the clinic because they are escorted to and from the clinic. Moreover, OCR found no evidence to indicate that the School treated clients with disabilities differently from clients without disabilities in this regard, as the School requires that all clients be escorted to and from the clinic, regardless of a client's disability status. Based on the foregoing, OCR determined that Allegation 1(g) does not raise a compliance concern under the regulations OCR enforces. Accordingly, OCR will take no further action regarding Allegation 1(g).

Allegation 1(h) – Floor 1 Braille Signage for Bathrooms

Regarding Allegation 1(h), the complainants alleged that the Braille signage for Floor 1 bathrooms is not raised, but is printed on flat paper. School personnel informed OCR that when the School initially moved into the Building, permanent Braille signage had not been installed, including for the Floor 1 bathrooms, and it confirmed that there were temporary signs that were printed on flat paper. School personnel could not identify a specific date when the permanent Braille signage was installed, but confirmed that all Braille signage was in place, including for the Floor 1 bathrooms, by December 2012 or January 2013. During OCR's first on-site inspection, OCR inspected the Floor 1 Women's, Men's, and Unisex/Gender-Neutral bathrooms and determined that the Braille signage was present and was raised. Accordingly, OCR has determined that Allegation 1(h) has been resolved; and, OCR will take no further action with respect to Allegation 1(h).

Allegation 1(i) – Auditorium Wheelchair Accessible Spaces

With respect to Allegation 1(i), the complainants alleged that there are only two designated wheelchair accessible seats in the auditorium. OCR determined that the auditorium is located on Floor 2 of the Building. The School informed OCR that there are a total of 187 seats in the auditorium, of which 6 are wheelchair accessible spaces. Specifically, the School stated that there are 2 wheelchair accessible desks in the front row of the auditorium along the aisle; and 4 wheelchair accessible desks in the rear row of the auditorium, each along an aisle, accompanied by fixed companion seating and with unobstructed sightlines.

During OCR's second on-site inspection, OCR confirmed that the auditorium has 6 wheelchair accessible spaces/desks, requiring forward access, in the locations the School identified, and that the access points to the spaces are level. OCR determined, however, that the running slope of the accessible route(s) within the auditorium to the front row, namely the vertical aisles, exceed the degree requirements specified by Section 4.3.7 (Slope) of ADAAG. Accordingly, OCR only considered the four wheelchair accessible spaces/desks in the last row of the auditorium. OCR determined that the four wheelchair accessible spaces meet the number required (according to the overall auditorium seats) by Section 4.1.3(19) (Assembly Areas) of ADAAG.

During OCR's first on-site inspection of the auditorium seating, OCR determined that there was no signage or marker designating each accessible seat, as required by 4.1.3(19) of ADAAG. The School notified OCR that during the course of OCR's investigation, it installed signage designating each of its accessible seats. During OCR's second on-site inspection of the auditorium seating, OCR confirmed the installation of signage on each of the four designated accessible seats. Accordingly, OCR has determined that Allegation 1(i) has been resolved; and, OCR will take no further action regarding Allegation 1(i).

On February 15, 2019, the School agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified above regarding Allegations 1(d),(e), and (f). OCR will monitor the implementation of the resolution agreement.

Allegation 2: Failure to Respond to Complaints Regarding Building Accessibility

The complainants alleged that the School failed to respond to complaints that they filed in XXXXXXXXXX and XXXXXXXX 2012, regarding the Building's physical accessibility, even though the School had admitted to them, or at least implied, that there were problems regarding the Building's accessibility. Specifically, the complainants informed OCR that they complained informally to the School in XXXXXXXXXX and XXXXXXXX 2012, including during meetings with School personnel on XXXXXXXXXX XX and XX, 2012, and XXXXXXXX X, 2012, in which they raised the same or similar concerns regarding the Building's accessibility as discussed in Allegation 1. The complainants stated that School personnel informed them that they were taking steps to address their concerns, and that remedying their concerns would take time; the complainants asserted to OCR that the School's response was insufficient. In addition, the complainants informed OCR that on XXXXXXXXXX XX and XX, 2012, they filed formal complaints alleging disability discrimination with the School's Chief Diversity Officer (the Diversity Officer), regarding their concerns. The complainants acknowledged to OCR that the School initiated an "informal" investigation regarding their complaints, on or about XXXXXXXX X, 2012; specifically, the complainants stated that in XXXXXXXX and XXXXXXXX 2012, an investigator reached out to them, informed them that the investigation was delayed due to Hurricane Sandy, and asked them to participate in interviews. The complainants stated that they elected to not participate in interviews, and they subsequently withdrew their internal complaints in late XXXXXXXX 2012 and early XXXXXXXX 2013.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires recipients to adopt grievance procedures that incorporate due process standards and that provide for the prompt and equitable resolution of complaints alleging disability discrimination. The regulation implementing

the ADA, at 28 C.F.R. § 35.107(b) contains a similar requirement. In the course of its monitoring of the resolution agreement in another OCR case, OCR Case No. 02-13-2052, OCR is reviewing the CUNY-wide grievance procedures, which are the grievance procedures the School adopted.

OCR confirmed that the complainants complained informally to the School in XXXXXXXXXX and XXXXXXXX 2012; and, that they filed formal complaints with the Diversity Officer on XXXXXXXXXX XX and XX, 2012. In addition, in the interim, the complainants filed the instant complaint with OCR on October 15, 2012. Further, OCR determined that during OCR's complaint evaluation process, the complainants withdrew their formal complaints with the School on XXXXXXXXXX XX and XX, 2012, and XXXXXXXXXX XX, 2013, respectively.

OCR determined that the School took steps to address the complainant's concerns, including meeting with the complainants, as described above; initiating an internal review process regarding those concerns; and, initiating a formal investigation in response to the complainants' formal complaints. OCR also determined that the School made changes to the Building in response to the complainants' concerns where it could be done so expediently, and without further research and review, including attempting to modify the opening force of some doors, as described in Allegation 1(d); and, modifying the timing of the ID badge scanners, as described in Allegation 1(f), which OCR previously determined had been resolved. OCR determined that the School continued to attempt to address the complainants' concerns up until the point that it received notice of the instant complaint filed with OCR; the School informed OCR that thereafter, it continued to address accessibility issues where it was able, but it was awaiting OCR's determinations and any subsequent resolution before addressing some of the larger concerns raised by the complainants.

Based on the foregoing, the complainants did not provide and OCR did not find any evidence to substantiate the complainants' allegation that the School failed to respond to their complaints regarding the Building's accessibility. Rather, OCR determined that the School responded to and remedied the complainants' concerns where they were able, both prior and subsequent to the complainants' withdrawal of their formal complaints; but in other instances, it suspended any additional response and action pending OCR's investigation and subsequent determinations. Accordingly, OCR will take no further action regarding Allegation 2.

Allegation 3: Academic Adjustments for Student 1

The complainants alleged that the School discriminated against Student 1, on the basis of her disability, by failing to provide Student 1 with an effective note-taker during (a) the spring 2012 semester in the following courses: XXX and XXX XXXXXXX XXXXXXX XX(Course A), XXXXX XXXXXXXXXX (Course B), and XXX and XXXXXXX XXXXXXXXXX (Course C); and, (b) the fall 2012 semester for the following courses: XXXXXXXXXXXXXXX XXXXXXXXXX (Course D), XXXXXXXXXXXXXXX XXXXXXXXXX (Course E), XXXXXXXXXX (Course F), XXXXXXXXXX XXXXXXXXXX (Course G), and XXXXXXXXXX (Course H).

The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability, and to take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of educational auxiliary aids. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request

academic adjustments or auxiliary aids. In reviewing allegations regarding the provisions of academic adjustments or auxiliary aids, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustment or auxiliary aids were required; (2) the academic adjustments or auxiliary aids were necessary; (3) the appropriate academic adjustments were provided; and, (4) the academic adjustments or auxiliary aids were of adequate quality and effectiveness. See also the ADA, at 28 C.F.R. § 35.130(b)(7).

Student 1 informed OCR that she was born with a XXXXXXXXXXXX XXXXXXXXXXXXXXXX of the XXXX XXXX. OCR determined that due to her disability, Student 1 was approved for note-takers as an academic adjustment for the spring 2012 and fall 2012 semesters.

With respect to Allegation 3(a), the complainants alleged that the School discriminated against Student 1, on the basis of her disability, by failing to provide Student 1 with an effective note-taker during the spring 2012 semester in the following courses: XXX and XXX XXXXXXX XXXXXXXX XX (Course A), XXXXX XXXXXXXXXXXX (Course B), and XXX and XXXXXXX XXXXXXXXXXXX (Course C). Specifically, Student 1 informed OCR that (i) there was a consistent delay in the note-takers' providing notes to her; and, (ii) the quality of the notes for Course B was poor.

With respect to Allegation 3(a)(i), the alleged delay in the provision of the notes, Student 1 informed OCR that throughout the spring 2012 semester, notes for Course A were delayed one to two weeks; and, that by April 2012, her class notes for Courses A, B, and C were approximately three weeks delayed. Student 1 stated that she emailed the School's Director of Student Services and Disability Coordinator (Disability Coordinator) on February 24, 2012, and again on April 30, 2012, regarding delays in receiving notes for her spring 2012 classes. Student 1 asserted that student note-takers delayed submitting notes to the Disability Coordinator.

The Disability Coordinator informed OCR that she coordinates student note-takers for students with disabilities and that she tells note-takers to submit notes immediately after class, if possible, but by no later than the end of the week. The Disability Coordinator also informed OCR that she sends emails to note-takers weekly to remind them to submit notes. The School asserted that student note-takers provided notes to Student 1 for every class in Courses A, B, and C during the spring 2012 semester.

OCR confirmed that the School's practice is to obtain volunteer student note-takers from the class and compensate them with a per class stipend. OCR determined that spring 2012 classes began on January 17, 2012, and the Disability Coordinator emailed first year law school students on January 19, 2012, searching for student note-takers for Student 1's Courses A, B, and C.

The School provided to OCR a copy of the notes posted for each class on TWEN, an online file-sharing site maintained by Westlaw, where students retrieve notes. OCR determined that student note-takers submitted notes to the Disability Coordinator via email and the Disability Coordinator in turn posted the notes on TWEN.

The Disability Coordinator informed OCR that Student 1 emailed her on February 24, 2012, and in April 2012 complaining about the timeliness of her class notes. The Disability Coordinator informed OCR that she responded both times by emailing the student note-takers. On April 30,

2012, Student 1 emailed the Disability Coordinator that her class notes for Courses A, B, and C were “a few weeks” behind; and in response, the Disability Coordinator informed Student 1 that she emailed the student note-takers. Further, in the email to Student 1 on April 30, 2012, the Disability Coordinator stated “this has been a very unusual situation this year where note-takers have been so late in sending notes. Next year, I plan to define my expectations a little more, i.e., notes must be sent within 24 hours or on a weekly basis.”

OCR determined that notes for Course A were posted on TWEN one to fifteen days after a class met; and on average were posted on TWEN one week after a class met. Student 1 received an “A” grade in Course A. OCR determined that notes for Course B were posted on TWEN the same day to sixteen days after a class met; and on average were posted on TWEN one week after a class met. Student 1 received an “A” grade in Course B. OCR further determined that notes for Course C were posted on TWEN one to twenty days after a class met; and on average were posted one week after a class met. Student 1 received an “A” grade in Course C.

Based on the foregoing, OCR determined that, although there were some delays in class notes being provided to the complainant, she received class notes for Courses A, B, and C, within an average of one week after a class met. Further, the complainant received grades of “A” in all three courses. Therefore, OCR determined that there was insufficient evidence to substantiate the complainants’ allegation that the School discriminated against Student 1, on the basis of her disability, due to the consistent delay in note-takers’ providing notes to Student 1 during the spring 2012 semester for Courses A, B and C. Accordingly, OCR will take no further action regarding Allegation 3(a)(i).

With respect to Allegation 3(a)(ii), the alleged inadequate quality of the notes, Student 1 stated that she had “big” issues with the quality of class notes for Course B, which she stated were, at times, less comprehensive than Student 1’s own notes. Student 1 informed OCR that the notes were sparse, in bullet points, and at times only included half a sentence without providing detail. Student 1 informed OCR that she met with an Academic Dean on March 5, 2012, and April 10, 2012, and informed the Academic Dean that she was frustrated with the quality of the notes she received from the student note-takers. Student 1 informed OCR that at these meetings, she raised the possibility of obtaining a professional note-taker and the Academic Dean responded that she would look into the practice of other law schools. Student 1 informed OCR that the Academic Dean subsequently informed her that a professional note-taker was too costly and would be inappropriate, because a professional note-taker would not be well-versed in the law.

The School’s Interim Dean of Students (the Student Dean) informed OCR that she recalled discussing Student 1’s request for professional note-takers at a meeting with Student 1 on XXXXXXXXXX XX, 2012, and XXXXXXXXXX XX, 2012. The Student Dean informed OCR that she and the Director of Student Affairs (the SA Director) called other law schools and professional schools, and could not find any school that provided professional note-takers, nor could they find a professional note-taking service for law schools on the internet. The Student Dean informed OCR that Student 1 insisted on professional note-takers because Student 1 believed that the substance of her class notes was not sufficient; however, the Student Dean informed OCR that Student 1 could not articulate what was deficient about the class notes she received.

The Disability Coordinator asserted that Student 1 did not complain about the quality of notes; rather, Student 1 stated that she did not like the format of her notes, but failed to provide details about what she wanted. The Disability Coordinator informed OCR that Student 1 first requested a professional note-taker at a meeting with School personnel on XXXXXXXXXX XX, 2012. The Disability Coordinator stated that the Student Dean responded to Student 1's request for a professional note-taker by inquiring with other law schools. The Disability Coordinator informed OCR that the Student Dean reported that no school currently hired professional note-takers. Further, the Disability Coordinator informed OCR that she did not recall any discussions about not hiring professional note-takers for Student 1 because of cost prohibitions or out of fear that doing so would result in an unfair advantage. The Disability Coordinator stated that there was an issue of finding a professional note-taker with legal knowledge. As stated above, Student 1 received grades of "A" in all three courses.

Based on the foregoing, OCR determined that although Student 1 did not like the format of the notes she received for Course B, there was insufficient evidence to substantiate that the notes were of poor quality. Further, OCR determined that the School looked into Student 1's request for a professional note-taker, but did not find that there were professional note-takers with legal knowledge sufficient to serve as Student 1's note-taker. Further, Student 1 received grades of "A" in all three courses. Therefore, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the School discriminated against Student 1, on the basis of her disability, because of poor quality of notes for Course B during the spring 2012 semester. Accordingly, OCR will take no further action regarding Allegation 3(a)(ii).

With respect to Allegation 3(b), the complainants alleged that the School discriminated against Student 1, on the basis of her disability, by failing to provide Student 1 with an effective note-taker during the fall 2012 semester for the following courses: XXXXXXXXXXXXXXX XXXXXXXXXX (Course D), XXXXXXXXXXXXXXX XXXXXXXXXX(Course E), XXXXXXXXXX (Course F), XXXXXXXXXX XXXXXXXXXX (Course G), and XXXXXXXXXX (Course H). Specifically, Student 1 informed OCR that (i) there was a consistent delay in the notetakers' providing notes to her; and, (ii) the quality of the notes for Course E was poor.

Student 1 informed OCR that she did not recall the quality or timeliness of Course F class notes and withdrew from Course F early-on for reasons other than the quality and timeliness of the class notes. Accordingly, OCR did not further investigate Allegation 3(b) with respect to Course F.

With respect to Allegation 3(b)(i), the alleged delay in the provision of the notes, Student 1 informed OCR that she did not receive notes for Course D until approximately the seventh week of the fall 2012 semester; and she did not receive notes for Courses E, G, and H until the third week of fall 2012 classes. OCR determined that fall 2012 classes began on August 27, 2012, and the Disability Coordinator emailed law school students on August 29, 2012, searching for student note-takers for Student 1's Courses D, E, G, and H.

With respect to Course D, OCR determined that the Disability Coordinator emailed students enrolled in Course D on August 29, 2012, and August 31, 2012, searching for a student note-taker in the course. On September 20, 2012, the Disability Coordinator emailed Course D's professor, stating that she was having trouble finding a note-taker for Course D and asked the professor for

recommendations. On September 24, 2012, the Disability Coordinator emailed a student in Course D (Student 4) asking the student to be a note-taker; however, Student 4 declined. The Disability Coordinator then emailed five different students asking for a note-taker in course D. On September 26, 2012, the Disability Coordinator again emailed Course D's professor, stating that she needed a note-taker for Course D; the Disability Coordinator also asked Course D's professor to share PowerPoint slides and any professor notes with Student 1, and to meet privately with Student 1 if Student 1 needed help. The Disability Coordinator informed OCR that Course D students stated that the course's discussion-based format did not lend itself to note-taking. Further, the Disability Coordinator asserted that Course D's professor confirmed that, given the course format, it was hard to take class notes and students in the class did not take notes. Course D's professor also stated that the course did not require any quizzes or tests, and included a final paper rather than an exam. The Disability Coordinator informed OCR that she spoke to Student 1 about Course D's structure and the School's inability to locate a volunteer note-taker from the class, but that Student 1 still insisted on receiving class notes for Course D. The Disability Coordinator informed OCR that towards the beginning of the fall 2012 semester, she offered Student 1 the use of a tape recorder to audio tape Course D classes, which Student 1 rejected; and in September 2012, she offered Student 1 the use of a "smart pen" to record Course D classes. OCR determined that a work-study student ultimately began transcribing recordings of Course D, and Student 1 first received notes for Course D on October 4, 2012, approximately the sixth week of the fall 2012 semester; Student 1 never received notes from the first six weeks of Course D's classes. Student 1 took Course D pass/fail and passed the course after receiving a grade of "CR" (Credit).

With respect to Course E, OCR found no evidence to corroborate Student 1's assertion that she did not receive notes for Course E until the third week of class; the fall 2012 semester began on August 27, 2012, and the School submitted TWEN documents showing that Course E's class notes for August 28, 2012, were posted on TWEN three days later, on August 31, 2012. OCR further determined that Course E's first note-taker's notes were posted on TWEN the same day to three days after a class met. Student 1 received an "A-" grade in Course E.

With respect to Course G, OCR found no evidence to corroborate Student 1's assertion that she did not receive notes for Course G until the third week of class; the fall 2012 semester began on August 27, 2012, and the School submitted TWEN documents showing that Course G's class notes for August 28, 2012, were posted on TWEN three days later, on August 31, 2012. OCR further determined that notes for Course G were posted on TWEN the same day to six days after a class met. Student 1 took Course G pass/fail and passed the course after receiving a grade of "CR" (Credit).

With respect to Course H, OCR found no evidence to corroborate Student 1's assertion that she did not receive notes for Course H until the third week of class; the fall 2012 semester began on August 27, 2012, and the School submitted TWEN documents showing that Course H's class notes for August 27, 2012, were posted on TWEN four days later, on August 31, 2012. OCR further determined that notes for Course H were posted on TWEN the same day to twelve days after a class met. Student 1 withdrew from Course H for reasons unrelated to the note-taker, and received an "INC" (Incomplete) grade in Course H.

Based on the foregoing, OCR determined that although there was a delay in providing notes to Student 1 for Course D, the School offered the complainant several effective alternatives to note-takers; specifically, the use of an audiotape recorder or a smart pen to record classes. Further, OCR determined that Course D did not easily lend itself to note-taking, as it was primarily a discussion class. Additionally, OCR determined that the School ultimately began providing transcribed class recordings of Course D to Student 1; and, Student 1 passed Course D, which was a pass/fail course. With respect to Courses E, G and H, OCR found no evidence to substantiate that there was a delay in providing notes for these courses. Therefore, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the School discriminated against Student 1, on the basis of her disability, due to the consistent delay in notetakers providing notes to Student 1 during the fall 2012 semester for Courses D, E, F, G, and H. Accordingly, OCR will take no further action regarding Allegation 3(b)(i).

With respect to Allegation 3(b)(ii), the alleged inadequate quality of the notes, Student 1 informed OCR that Course E notes were of poor quality and not comprehensive. Student 1 stated, however, that she raised her concerns regarding Course E's first student note-taker with the Disability Coordinator, and that she requested and received a different note-taker for Course E within two weeks. Student 1 informed OCR that she had no issues with the quality of the notes for Course E after receiving the second note-taker. Accordingly, OCR determined that Allegation 3(b)(ii) was resolved. Further, as stated above, Student 1 received an "A-" grade in Course E. Therefore, OCR will take no further action regarding Allegation 3(b)(ii).

Allegation 4: Auxiliary Aids for Student 2

The complainants alleged that the School discriminated against Student 2, on the basis of her disability, by failing to provide Student 2 with the approved auxiliary aid of remote captioning or remote CART reporting during the fall 2012 semester for the following courses: XXXXXXXXX (Course I); XXXXXXXXX XXXXXXXXXX (Course J); XXXXXXXXX XXXXXXXXXXXXXXXX (Course K); and XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX (Course L). Contrary to the complainants' allegation, OCR determined that the School did not approve Student 2 to receive remote CART reporting exclusively during the fall 2012 semester; rather, Student 2 was approved for CART reporting, generally, which could be provided remotely or through XXXXXXXXXX reporting. Student 2 was provided an XXXXXXXXXX CART reporter for each class in Courses I, J, and L; and, a mix of XXXXXXXXXX and remote CART reporting for each class in Course K.

OCR determined that the amount of remote and XXXXXXXXXX CART reporting changed slightly during the fall 2012 semester. On October 24, 2012, the Disability Coordinator sent an email to Student 2 offering to: (1) provide remote CART reporting instead of XXXXXXXXXX CART reporting for Course I, so that the assigned XXXXXXXXXX CART reporter (the Reporter) could have Monday off; (2) move Student 2's other classes into a room capable of remote CART reporting to allow for more remote CART reporting in other courses; and, (3) bring XXXXXXXXXX CART reporters from an agency or someone the Reporter recommends to "fill in" to provide XXXXXXXXXX CART reporting for Student 2's other classes. Student 2 responded by email on October 24, 2012, stating, "In the short term, if [the Reporter] wants to, it seems like doing [Course I] remotely would help a lot – not sure about moving around the other classes to be in that room is the right solution (but I really appreciate that it IS an option). If [the Reporter] thinks that she needs

additional support remotely by moving classes around, I'll defer to that (and professors' willingness to move)." Beginning on November 5, 2012, Student 2 was provided remote CART reporting for one of two weekly Course K classes.

Student 2 acknowledged that she received CART reporting for Courses I, J, K and L during the fall 2012 semester; however, Student 2 informed OCR that she frequently complained to the Disability Coordinator during the fall 2012 semester regarding problems with the Reporter, and how the Reporter's work deteriorated through the semester and adversely affected Student 2's academic performance. Student 2 informed OCR that the Reporter's work quality suffered due to fatigue from a heavy workload, which often included long back-to-back classes. Student 2 informed OCR that she requested a new CART reporter mid-semester of fall 2012 and that the School informed her that it would look into her request.

OCR found no evidence to substantiate that Student 2 complained about the quality of the XXXXXXXXXX CART reporting, until November 20, 2012. OCR determined that on November 20, 2012, Student 2 emailed the Disability Coordinator, requesting remote captioning to be "incorporated into [her] schedule more fully next semester" and stated that the Reporter's "reporting has deteriorated a bit." OCR determined that on December 3, 2012, Student 2 emailed the Disability Coordinator, stating that she "really want[s] more remote coverage next semester" and that the Reporter's "performance has really deteriorated." OCR determined that Student 2 did not request a new CART reporter during the fall 2012 semester or more remote CART reporting for the fall 2012 semester; rather, on April 26, 2013, during the spring 2013 semester, Student 2 emailed School personnel requesting a new CART reporter. OCR determined that this request was granted and Student 2 received a different XXXXXXXXXXCART reporter for the fall 2013 semester.

Based on the foregoing, OCR determined that, contrary to the complainants' allegation, the School did not approve Student 2 to receive only remote CART reporting during the fall 2012 semester. Accordingly, there was insufficient evidence to substantiate the complainants' allegation that the School discriminated against Student 2, on the basis of her disability, by failing to provide Student 2 with the approved auxiliary aid of remote captioning or remote CART reporting during the fall 2012 semester for courses I, J, K and L. Therefore, OCR will take no further action regarding Allegation 4. Further, OCR determined that the School provided a CART reporter to Student 2 for each class in Courses I, J, K and L; either XXXXXXXXXX or remotely. OCR also determined that there was insufficient evidence to substantiate that the School failed to respond to Student 2's concerns regarding the quality of CART reporting she received in the fall 2012 semester. OCR determined that in October 2012, Student 2 was offered both remote and XXXXXXXXXX alternatives to the Reporter. Further, when Student 2 complained about the quality of the Reporter in November 2012, she requested more remote CART reporting for the spring 2013, not the fall 2012 semester.

Allegation 5: Disability-Based Harassment

The complainants alleged that the School's Interim Dean of Students (the Student Dean) subjected Students 2 and 3 to harassment, because of their disabilities, by yelling at them during a meeting on XXXXXXXXXX XX, 2012. Specifically, the complainants alleged that the Student Dean: (a) harassed Student 3, by leaning over the table, pointing her finger at Student 3, and screaming "Shut up!" while Student 3 was describing her concerns regarding the Building's inaccessibility; and, (b)

harassed Student 2, by yelling at Student 2, when Student 2 asked the meeting participants to speak one at a time because of her hearing impairment. The complainants stated that the School personnel witnessed the harassment, as well as three representatives of the School Student Government (SG), whom they requested to attend the meeting on their behalf.

Disability harassment that creates a hostile environment is a form of discrimination prohibited by Section 504, the ADA and their implementing regulations. Harassing conduct by an employee, a student, or a third party can include verbal, written, graphic, physical or other conduct; or, conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently severe, persistent, or pervasive to interfere with or deny a student's participation in or receipt of benefits, services or opportunities in the institution's program. If OCR determines that harassing conduct occurred, and that the school had actual or constructive notice of the harassment, OCR will examine additional factors to determine whether a hostile environment existed and whether the school took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

OCR determined that at the request of the complainants, the School convened a meeting with the complainants and the three SG representatives on XXXXXXXX XX, 2012, to discuss the complainants' concerns about the accessibility of the Building, as well as other disability-related concerns. OCR determined that the Student Dean, the Safety Director, and the SA Director participated in the meeting. OCR also determined that the Reporter was present to provide XXXXXXXX CART reporting services to Student 2. As stated above, the Reporter did not consent to an interview with OCR; however, two of the three SG representatives (SG 1 and 2) provided information to OCR with respect to Allegation 5.

With respect to Allegation 5(a), School personnel stated that the tenor of the meeting was "hostile," particularly due to the actions of Student 3, and that the complainants were detailing a litany of complaints without permitting School personnel to respond or address their concerns. The Student Dean and School personnel denied that the Student Dean leaned over the table and pointed her finger at Student 3; rather, they stated that the Student Dean and Student 3 had been sitting across the table from one another, and Student 3 had been confrontational and rude during the meeting by pointing, shouting, and "grandstanding." School personnel further stated Student 3 "jumped up and pointed her finger" at the Student Dean; and, the Student Dean responded by telling Student 3 to "Shut up, and let me talk." The Student Dean and School personnel stated that the Student Dean directed this statement to Student 3 because of her actions and demeanor, not because Student 3 or any of the other complainants had disabilities, or were raising concerns about the Building's inaccessibility. The Student Dean, School personnel, and both SG 1² and SG 2³ confirmed that the

² SG 1 informed OCR that the meeting was hostile because everyone was frustrated, but denied that anyone, including the Student Dean or Student 3, pointed fingers at anyone. Further, SG 1 stated that the Dean made the comment because she was frustrated and the discussion was heated.

³ SG 2 stated that the Student Dean pointed her finger at Student 3, yelled at her, and told her to "shut up and stop talking." SG 2 stated that the Student Dean exhibited this conduct in response to the suggestion that the School was in violation of the ADA due to the Building's inaccessibility, because she had discriminatory beliefs regarding students with disabilities; and, because she "resented" the complainants and wanted to "punish" them. SG 2 did not provide any additional information to support the assertions made about the Student Dean's beliefs or feelings. SG 2 also denied that Student 3 yelled or pointed at anyone during the meeting.

meeting continued and a discussion of the complainants' concerns resumed after the Student Dean's statement.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR found that a preponderance of the evidence substantiated that the Student Dean told Student 3 to "Shut up, and let me talk," or another statement to that effect; however, OCR did not find the preponderance of the evidence substantiated that the Student Dean pointed at Student 3 in making her statement. Further, OCR determined that the Student Dean provided a legitimate, non-discriminatory reason for making the statement; namely, the meeting had become tense and heated, and the Student Dean was trying to make a statement in the middle of a heated discussion. Moreover, OCR determined that the meeting continued and a discussion of the complainants' disability-related concerns, including the accessibility of the Building, resumed after the Student Dean's statement. Therefore, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the Student Dean subjected Student 3 to harassment, because of her disability, by leaning over the table, pointing her finger at Student 3, and screaming "Shut up!". Accordingly, OCR will take no further action regarding 5(a).

Regarding Allegation 5(b), the Student Dean and School personnel stated that they recalled Student 2's asking the meeting participants to speak one at a time or to speak more slowly, but they did not recall a specific response to her request or that the Student Dean yelled at Student 2. SG 1 stated that Student 2 requested that the meeting participants speak one at a time, but that no one, including the Student Dean, yelled at Student 2. SG 2 confirmed SG 1's account, but stated that the Student Dean "raised her voice" because it appeared that she was trying to speak over Students 2 and 3. Both SG 1 and SG 2 stated that after Student 2's request, the meeting participants stopped arguing, and the meeting continued at a "slower and calmer pace."

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the Student Dean subjected Student 2 to harassment, because of her disability, by yelling at Student 2 when Student 2 asked the meeting participants to speak one at a time because of her hearing impairment. Moreover, based upon the testimony of SG 1 and SG 2, OCR determined that the Student Dean and School personnel responded to Student 2's request by slowing down and speaking more slowly. Accordingly, OCR will take no further action regarding Allegation 5(b).

As stated above, on February 15, 2019, the School agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified above regarding Allegations 1(d),(e), and (f).

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

Please be advised that the School 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 individual may file a 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, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The complainants may appeal the determinations regarding Allegations 1(a), (b), (c), (d) with respect to the auditorium doors, (g), and 2-5. An appeal must be submitted within sixty (60) calendar days of the date of this letter. In the appeal, the complainant must explain why the complainant believes that the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how the correction of any error(s) would change the outcome of the case. Failure to do so may result in the dismissal of the appeal. The complainant must either submit a completed online appeal form or mail a written statement of no more than ten (10) pages (double-spaced, if typed). If submitted by mail, send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted by electronic mail, send to OCR@ed.gov. If submitted by fax, send to (202) 453-6012.

If you have any questions about OCR's determination, please contact David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; or Amy Randhawa, Compliance Team Attorney, at (646) 428-3781 or sandeep.randhawa@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXXXXXXXXX XXXXXX, Esq.

XXXX XXX, Esq.