

December 14, 2015

Dr. Yocasta Brugal
President
San Juan Bautista School of Medicine
P.O. Box 4968
Caguas, Puerto Rico 00727

Re: Case No. 02-15-2367
San Juan Bautista Medical School

Dear Dr. Brugal:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the San Juan Bautista Medical School (the School). The complainant alleged that the School discriminated against her on the basis of her disability throughout academic year 2014-2015, by failing to provide her with the following academic adjustments during laboratory examinations and class quizzes: (a) time and a half; and (b) a separate testing location (Allegation 1). The complainant also alleged that the School discriminated on the basis of disability by failing to provide her with a working internet connection in the separate testing location to which she was assigned throughout academic year 2014-2015 (Allegation 2). The complainant further alleged that she was subjected to harassment on the basis of her disability throughout academic year 2014-2015 when her professors publicly announced during classroom quizzes that all students not receiving extended time as an accommodation for a disability should leave the classroom (Allegation 3). In addition, the complainant alleged that the School failed to respond appropriately to her complaints throughout academic year 2014-2015, regarding the School's failure to provide her with academic adjustments, and the alleged disability harassment by her XXXXXX and XXXXXX Professor (Professor 1), her XXXXXX and XXXXXX Professor (Professor 2), and her XXXXXX Professor (Professor 3) (Allegation 4).

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 or activities receiving financial assistance from the U.S. Department of Education (the Department). The School is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

In its investigation, OCR interviewed the complainant, School personnel, and students enrolled in the School. OCR also reviewed documentation that the complainant and the School submitted. OCR made the following determinations.

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 adjustments or auxiliary aids were required; (2) the academic adjustments or auxiliary aids were necessary; (3) the appropriate academic adjustments or auxiliary aids were provided; and (4) the academic adjustments or auxiliary aids were of adequate quality and effectiveness.

OCR determined that during academic year 2014-2015, the complainant was enrolled as a first year medical student at the School. OCR determined that, in accordance with the School's procedures, the complainant registered as a student with a disability within the Student Programs Coordinator Office; and that pursuant to a Reasonable Accommodation Program Participant Certification (Reasonable Accommodation Certification) dated November 4, 2014, the complainant was approved to receive accommodations of "additional testing time up to a maximum of 50% of the original established testing time" and a "separate testing environment that allows [her] to stand up and/or walk as needed." The Reasonable Accommodation Certification did not specifically state that the provisions were applicable to the laboratory examinations and class quizzes at issue in this complaint.

Allegation 1

With respect to Allegation 1(a) the complainant alleged that throughout academic year 2014-2015, various professors discriminated against her, on the basis of disability, by failing to provide her with the approved academic adjustment of extended time for laboratory examinations and class quizzes.¹ The complainant asserted that because she was not provided with extended time, she had to rush through her examinations and quizzes and scored poorly as a result.

OCR determined that the complainant's Reasonable Accommodation Certification included extended time on tests. However, the School asserted that the provision was not intended to apply to laboratory examinations and class quizzes. According to the XXXXXX XXXXXX Coordinator (XXXXXX Coordinator), the individual responsible for approving student requests

¹ The complainant specifically recalled not receiving extended time on the following laboratory exams and quizzes: quiz, taken on August 7, 2014; Histology laboratory exam, taken on August 22, 2014; Lipid Metabolism Biochemistry quiz, taken on August 25, 2014; Genetics quiz, taken on September 16, 2014; Academic Competence Enhancement (ACE) activity quizzes, administered on August 27, 2014, February 9, 2015, February 25, 2015 and March 11, 2015.

for reasonable accommodations, the School authorized the complainant to receive extended time for long exams, such as the standardized “Customized Assessment Services” examinations (CAS exams),² which lasted approximately 2 to 2 ½ hours, and longer class exams created by School faculty.³ The XXXXXX Coordinator asserted that because laboratory exams and class quizzes were generally shorter in duration, the School never intended for the complainant to receive extended time for these assessments.⁴ The School also asserted that many of the class quizzes were administered online with unlimited time.

With respect to Allegation 1(b), the complainant asserted that the School failed to provide her with a separate testing location for all of her laboratory examinations and class quizzes, and that as a result, she was not provided space to perform her medical stretching exercises during the examinations. The complainant acknowledged that the School provided a separate testing location for her CAS exams, but stated that she was not similarly provided a separate location for laboratory examinations and class quizzes.

The School asserted that the complainant was not approved to receive a separate testing location as an academic adjustment for the complainant to complete class quizzes or laboratory examinations; and was only approved to receive a separate testing location for CAS exams. The School further asserted that the space provided for class quizzes and laboratory examinations did not impede the complainant from standing up and stretching as necessary, and that the complainant never complained regarding the adequacy of her testing locations.

OCR determined that between July 2014 and October 2014, the XXXXXX Coordinator frequently corresponded by email with the complainant, the Chair of the XXXXX XXXX Curriculum Committee (XXXXX XXXX Chair), the Academic Dean, and the XXXXXXXX XXXXX of XXXXXXXX XXXXXXXXXXXX (XXXX) Proctor regarding the complainant’s academic adjustments. In an email sent in or around October 2014, the complainant inquired about receiving extended time and a separate location during class quizzes and laboratory examinations. In an email dated October 30, 2014, the XXXXX XXXX Chair notified the complainant’s first year class coordinators (i.e., professors) that the complainant was to receive one and a half (1.5) times extended time and a separate testing location for all “written evaluations including quizzes, CAS exams, oral exams, or written evaluations.”

The School asserted that the XXXXX XXXX Chair sent the email in error, although the XXXXX XXXX Chair informed OCR that prior to sending the email, she had consulted with the XXXXXXXX Coordinator in order to respond to the complainant’s inquiry about receiving her accommodations during class quizzes and laboratory examinations. The XXXXXXXX Coordinator disputed the XXXXX XXXX Chair’s account. However, OCR determined that the

² CAS exams are standardized tests administered by the National Board of Medical Examiners (NBME).

³ The Student Coordinator explained that because the complainant’s disability prevents her from sitting for prolonged periods of time, the School authorized the extended testing time in order to provide her with sufficient time to complete medically required stretching exercises during longer examinations.

⁴ The XXXXXXXX Coordinator informed OCR that most class quizzes were less than 15 minutes in length and documentation provided by the School to OCR indicated many of the quizzes were less than 20 minutes in duration. The School provided OCR with documentation indicating that the laboratory examinations were approximately 20 minutes in length.

XXXXXXX Coordinator was copied on the First Year Chair's email of October 30, 2014, and she did not contact the First Year Chair to correct her alleged misunderstanding of the academic adjustments at that time or thereafter. Additionally, OCR determined that the Reasonable Accommodation Certification, dated November 4, 2014, generally stated the complainant was entitled to receive extended time and a separate testing location, and at no time did the School inform the complainant that she was not entitled to receive extended testing time of time and a half and a separate testing location for class quizzes and laboratory examinations or was otherwise subject to any limitation.

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, the School provided documentation indicating that the complainant had been approved for extended testing time of time and a half and a separate testing location. Although the XXXXXXXX Coordinator asserted that these academic adjustments were not intended to apply to class quizzes or laboratory examinations, the School did not provide any documentation to support this assertion. Rather, the School provided evidence and testimony that corroborates that the complainant was approved to receive extended testing time of time and a half and a separate testing location for laboratory examinations and class quizzes, beginning in or around October 2014. Accordingly, OCR determined that the preponderance of the evidence substantiated that the complainant was entitled to receive academic adjustments of extended testing time of time and a half and a separate testing location for all class quizzes and laboratory examinations.

Based on a review of documentation that the complainant and the School submitted, OCR determined that during academic year 2014-2015, the complainant did not receive her approved academic adjustment of extended time for at least six quizzes and/or laboratory examinations.⁵ Additionally, OCR determined that the School failed to provide the complainant with a separate testing location for 11 quizzes and/or laboratory examinations.⁶

Based on the foregoing, OCR determined that the School failed to comply with the regulation implementing Section 504, at 34 C.F.R. § 104.44. On December 14, 2015, the School agreed to enter into a resolution agreement to resolve this compliance concern.

⁵ OCR determined that the School did not provide the complainant with the academic adjustment of extended time on the following quizzes in Medical Physiology: Physiology Quiz 1, taken October 3, 2014; Cardiovascular System Quiz, taken on November 11, 2014; Respiratory System Quiz, taken on December 4, 2014; Renal System Quiz, taken on February 5, 2015. OCR also determined that the School did not provide the complainant with the academic adjustment of extended time on the following lab exams in Neuroscience: Head and Neck Anatomy Lab Exam taken on March 13, 2015 and Neuroscience Lab Exam II, taken on April 15, 2015.

⁶ OCR determined that the School did not provide the complainant with the academic adjustment of a separate testing location on the following quizzes/and or lab exams in: (a) Biochemistry and Genetic Medicine--Enzyme Quiz, taken on August 7, 2014; Lipid Quiz, taken on August 26, 2014, and Genetics Quiz, taken on September 16, 2014; (b) Histology and Cell Biology--Lab Exam I: Musculoskeletal, taken on October 28, 2014; Lab Exam II: Respiratory, taken on December 10, 2014, Lab Exam III: Gastrointestinal, taken on January 29, 2015, Lab Exam IV: Renal, taken on February 11, 2015; Lab Exam V: Reproductive, taken on February 24, 2015; (c) Medical Physiology--Cardiovascular System Quiz, taken on November 11, 2014; (d) Neuroscience--Head and Neck Anatomy Lab Exam, taken on March 13, 2015, and Neuroscience Lab Exam II, taken on April 15, 2015.

Allegation 2

With respect to Allegation 2, the complainant alleged that the School discriminated on the basis of disability, by failing to provide her with a working internet connection in the separate testing location to which she was assigned throughout academic year 2014-2015. In support of her allegation, the complainant asserted that she experienced difficulty connecting to the NBME server for all of her CAS exams that she completed in the separate testing location (i.e., the library) during academic year 2014-2015.⁷ The complainant stated that she was required to use a laptop in order to complete the CAS exams and the computer often would not connect to the NBME server when she sat down to complete them. The complainant asserted that she and the XXXX Proctor repeatedly attempted to connect to the NBME server, but due to technological difficulties, she was frequently unable to do so. The complainant asserted that she and the XXXX Proctor sometimes spent more than 90 minutes attempting to remedy the issue, lengthening the amount of time spent taking the examination, and therefore, exacerbating the symptoms of her disability. The complainant additionally asserted that due to multiple issues with the School's internet connection during a CAS exam on April 30, 2015, she lost approximately 30 minutes of exam time, and as a result, did not have sufficient time to complete the exam and scored poorly.

The School denied that it failed to provide the complainant with a working internet connection for the CAS exams taken in the separate testing location. Specifically, the School asserted that all students, including the complainant, were provided with the same internet service and therefore, had access to the same internet connection speed and quality. The XXXX Proctor, who was present during the administration of the CAS exams, denied that she and the complainant ever spent up to 90 minutes attempting to connect to the server. The XXXX Proctor acknowledged that on one or two occasions the complainant had difficulty connecting to the NBME server; however, the NBME Proctor asserted that the difficulties were resolved and did not affect the complainant's ability to complete the examinations with the full use of the time allotted to her. The School acknowledged that the complainant experienced a disruption in the internet connection while taking a CAS exam on April 30, 2015, but asserted that it was the result of a school-wide internet disruption and was not unique to the complainant. The School asserted that it attempted to remedy the issue by permitting the complainant to repeat the CAS exam on a later date.

OCR determined that during the complainant's first CAS exam administered on or about August 15, 2014, the School required her to use her personal laptop to take the exam.⁸ The XXXX Proctor informed OCR that the complainant experienced difficulty when she attempted to connect to the NBME server; however, the difficulty was not caused by the internet connection. Rather, the problem was caused by computer software installed on the complainant's computer that the NBME server identified as a "security risk." The XXXX Proctor asserted that she and the complainant were ultimately able to resolve the issue in less than 30 minutes, and that the

⁷ The CAS exams were administered online. Students logged into the NBME website at designated computers within the School's library and completed the standardized CAS exams through the NBME website.

⁸ OCR determined that the School later provided the complainant with the NBME Proctor's laptop for her CAS exams.

complainant then successfully connected to the server and took her CAS exam. The XXXX Proctor asserted that the complainant did not lose any examination time as a result of this issue, as it arose prior to the start of the CAS exam.⁹ The complainant acknowledged to OCR that she did not lose any examination time on the CAS exam administered on or about August 15, 2014.

With respect to the CAS exam administered on April 30, 2015, OCR determined that a school-wide internet disruption occurred at approximately 10:30 a.m. Students who started their exams earlier in the day were not affected because they had completed their exams before the internet outage. However, because the complainant started her exam at a later time, as an academic adjustment, she was taking her examination when the internet disruption occurred. OCR determined that the complainant contacted the XXXX XXXX Chair on April 30, 2015, to report the difficulties she experienced while taking her CAS exam that day, and to request an opportunity to repeat the exam or to have her exam graded on a separate grading scale from her classmates who were not affected by the internet outage. OCR further determined that on May 6, 2015,¹⁰ the XXXXX XXXX Chair responded to the complainant's email, informing her that she would be permitted to repeat the CAS exam originally administered on April 30, 2015, between May 13, 2015 and May 18, 2015, which is the School's designated period for make-up exams¹¹; however, the complainant elected not to repeat the CAS exam.¹²

Based on the foregoing, OCR determined that with the exception of two incidents on August 15, 2014, and April 30, 2015, the complainant had access to the NBME server on a working internet connection in her separate testing location. With respect to August 15, 2014, there was an issue with the complainant's laptop which the School remedied by supplying a laptop to the complainant.¹³ With respect to April 30, 2015, OCR determined that it was the only instance when the internet connection was disrupted school-wide while the complainant was taking an exam; and the School offered the complainant the opportunity to repeat the CAS exam on another date, which the complainant refused. Therefore, OCR determined there was insufficient evidence to substantiate the complainant's allegation that the School discriminated against her, on the basis of her disability, by failing to provide her with a working internet connection in the separate testing location to which she was assigned throughout academic year 2014-2015. Accordingly, OCR will take no further action regarding Allegation 2.

⁹ The XXXX Proctor informed OCR that students must first connect to the server and complete an exam "tutorial" before selecting a button to launch the exam. According to the NBME Proctor, because she had not connected to the server, the timer for her exam could not have started.

¹⁰ The XXXX XXXX Chair informed OCR that she was delayed in responding to the complainant's email because she and the other professors were busy "wrapping things up for the end of the year" and she had some difficulty organizing the course coordinators to attend a meeting to discuss the complainant's request.

¹¹ The XXXX XXXX Chair informed OCR that it is the School's policy to require students to repeat examinations and/or complete make-up activities during the School's designated period.

¹² OCR determined that the complainant declined to repeat the examination. The complainant informed OCR that she had several other mandatory academic activities scheduled for May 13, 2014, that made it impossible for her to repeat the CAS exam that day. Additionally, the complainant had planned to travel out of town on May 14, 2015, for a family obligation.

¹³ Although the complainant alleged that the issue connecting to the NBME server continued to occur when she used the School's laptop, the XXXX Proctor disputed this, and the complainant did not provide any other witnesses to corroborate her allegation.

Allegation 3

With respect to Allegation 3, the complainant alleged that she was subjected to harassment on the basis of her disability throughout academic year 2014-2015, when Professors 1, 2, and 3 publicly announced “that all students leave except the ones with disability accommodation[s] because they get extended time.” The complainant also asserted that on at least one occasion, Professor 2 addressed her by name stating, “Aren’t you staying for your extended time?” The complainant alleged that these public announcements led to other students making derogatory comments in class and on Facebook about students with disabilities, including the complainant, who requested accommodations, thereby creating a hostile environment.

Disability harassment is a form of discrimination prohibited by Section 504 and its implementing regulation. 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 serious to interfere with or deny a student’s participation in or receipt of benefits, services or opportunities in the recipient’s program. If OCR determines that harassing conduct occurred, OCR will examine additional factors to determine whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

Professor 1 denied making any of the alleged comments. Professor 2 acknowledged once making a statement during a Neuroscience exam that students without an accommodation should leave the room at the end of the allotted time, but she denied specifically identifying the complainant, or making any of the other alleged comments. The School informed OCR that Professor 3 also denied making any of the alleged comments.¹⁴

OCR interviewed a XXXXXX Instructor (Professor 4), who acknowledged making a comment in or around the last week of October 2014 that “any student receiving special accommodations” should approach him at the end of class. Professor 4 asserted that he made the comment in Spanish, but because the complainant did not understand Spanish, the complainant asked a member of her class to repeat the statement. According to Professor 4, the complainant’s classmate translated the statement as “students with disabilities receiving accommodations” should approach him at the end of class. Professor 4 asserted that he later regretted making the statement and subsequently approached the XXXXXX Coordinator for advice as to how to handle the situation. Professor 4 also apologized to the complainant for making such a comment and agreed to communicate with her regarding her accommodations via email in the future.

During its investigation, OCR contacted three of the complainant’s classmates that the complainant named as witnesses. Two students (Students 1 and 2) responded to OCR’s request for information.

Student 1 informed OCR that during academic year 2014-2015, he recalled that a professor publicly stated that students with accommodations should stay for extended time at the end of an

¹⁴ The School informed OCR that Professor 3 is no longer employed by the School. Professor 3 did not respond to OCR’s direct email request for information.

anatomy lab quiz. Student 1 stated that he specifically recalled at least one professor directly stating to a group of students that Student 1 knew to receive accommodations, “You all should not leave yet” at the end of the quiz. Student 1 could not provide the name of the professor who made the comment, but asserted that the comment was made in an anatomy class. In addition, Student 1 generally asserted that multiple professors made such announcements on several dates; however, he was unable to provide any specific information regarding the alleged incidents.

Student 2 did not recall any professors publicly announcing students’ accommodations. Rather, Student 2 recalled Professor 2 commenting when the complainant was absent from class that students who do not attend class are “unprepared” or “unprofessional.”¹⁵ Student 2 also informed OCR that another professor (Professor 5) stated during an XXXXXXXX quiz in or around November 2014, when the complainant was late to class, that students who were late to class should approach him at the end of the quiz to review the PowerPoint slides.

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 determined that Professor 2 once stated to the class that students without accommodations should leave the room at the end of the exam. Additionally, OCR determined that Professor 4 publicly announced that students receiving “special accommodations” should stay after the end of class and that one of the students interpreted his comment to relate to students with disabilities. OCR further determined that on at least one occasion, Student 1 witnessed a professor publicly announcing students’ accommodations. Accordingly, OCR determined that the preponderance of the evidence substantiated the complainant’s allegation that on at least three occasions, her professors publicly announced during classroom quizzes that all students receiving extended time as an accommodation for a disability should remain in the classroom.

With respect to the complainant’s allegation that the professors’ comments led to other students making derogatory comments in class and on Facebook about students with disabilities, including the complainant, OCR determined that there were two incidents of alleged derogatory comments.

With respect to the first incident (Incident 1), the complainant alleged that on or about November 11, 2014, she requested that a visiting professor for her XXXXXXXXXXXX course (Professor 6) speak in English because she did not understand the lesson he was teaching in Spanish. The complainant asserted that Professor 6 responded by asking the class if they objected to his teaching in English; and several of her classmates responded by stating, “[the complainant] already gets extra time on her exams and now she wants language accommodation too?” The complainant stated that several members of the class then laughed in response to this comment.¹⁶ The complainant did not assert that there were any further similar incidents. OCR was unable to

¹⁵ Professor 2 acknowledged making comments regarding the importance of coming to class but denied specifically identifying the complainant. Student 2 also asserted that Professor 1 once commented, “[the complainant] would understand this concept, but she is not in class.”

¹⁶ Documentation the complainant submitted to OCR indicated that she and Professor 6 discussed the incident and that she was pleased with their resolution; namely that Professor 6 offered the complainant a tutoring session in English.

confirm that Incident 1 occurred as alleged by the complainant, as none of the complainant's witnesses were able to confirm Incident 1.

With respect to the second incident (Incident 2), the complainant provided OCR with a copy of a Facebook post allegedly posted by one of her classmates (Student 4), who asserted that accommodations should not be provided to students for all disabilities.¹⁷ Several students responded to the post and Student 4 again asserted his belief that accommodations should not be provided for all disabilities, specifically stating that "someone classified with a physical disability (being back problems, lower limb paralysis, etc.) and being able to learn with no problem" did not imply that such a student's learning would be impaired and therefore necessitate accommodations such as additional time during testing. The complainant responded to Student 4's post, describing her disability and her need for accommodations. Student 4 then responded to the complainant's post directly by denying that the post was directed at the complainant, but defending his previous position regarding the necessity of accommodations. OCR determined that the complainant did not report Incident 2 to the School, and OCR found no evidence that the School had actual or constructive notice of the incident such that the School would have been obligated to respond to the alleged harassment.

Based on the foregoing, OCR could not substantiate that throughout academic year 2014-2015, Professors 1, 2, and 3 publicly announced "that all students leave except the ones with disability accommodation[s] because they get extended time." However, OCR determined that on at least three occasions, the complainant's professors publicly announced during classroom quizzes that all students receiving extended time as an accommodation for a disability should remain in the classroom. Nevertheless, OCR could not confirm that the comments were directed at the complainant, or that she was identified by the comments. OCR determined that Professors 2's and 4's comments were directed towards all students in the class who required accommodations, and OCR confirmed that the complainant was not the only student in the classroom requiring accommodations. Furthermore, although the professors' comments were inappropriate and unprofessional, OCR determined that they were made for the purpose of ensuring that the complainant received the academic adjustments to which she was entitled. Additionally, the complainant did not allege, and OCR did not find any evidence to indicate, that students harassed the complainant, or otherwise commented when these announcements were made. OCR was only able to confirm one instance, Incident 2, in which students made derogatory comments via a Facebook post, regarding students with disabilities, including the complainant, who requested accommodations. However, OCR determined that this was an isolated incident that occurred after the end of academic year 2014-2015, more than six months after the professors' public announcements of the complainant's accommodations.

Accordingly, OCR determined that the students' and professors' comments did not create a hostile environment that was sufficiently serious to interfere with or deny the complainant's participation in or receipt of benefits, services or opportunities in the recipient's program; thus,

¹⁷ OCR determined that on June 22, 2014, a student posted the following comment: "Is it really fair to provide more leeway in academics to students with any and all disabilities when compared to those with none? Is it really fair for fellow students and professors? Especially for med students, is it really fair for patients? P.S. Before, ranting, be conscious that I said ANY and ALL."

the conduct did not rise to a level to substantiate a violation of the regulations implementing Section 504. Therefore, OCR will take no further action regarding Allegation 3.

Allegation 4:

With respect to Allegation 4, the complainant alleged that the School failed to respond appropriately to her complaints made throughout academic year 2014-2015, regarding the School's failure to provide her with academic adjustments and the alleged disability harassment by Professors 1, 2, and 3. The complainant provided documentation to OCR indicating that she contacted the Associate Dean for Student Affairs (Associate Dean) via email to report incidents of harassment on or about September 26, 2014 (Complaint 1), November 20, 2014 (Complaint 2), and May 27, 2015 (Complaint 3). The complainant asserted that the School failed to respond appropriately to each of these complaints of disability harassment.

With respect to Complaint 1, OCR reviewed the complainant's email to the Associate Dean, sent on September 26, 2014, in which she reported that Professor 2 subjected her to "verbal harassment" regarding research she had conducted without supervision or approval by the School. The email did not describe the "verbal harassment" or state that it was based on the complainant's disability. However, the Associate Dean informed OCR that she recalled that during a meeting with the complainant on September 29, 2014, to discuss the complainant's email, the complainant reported that Professor 2 had asked her why she was attending medical school when she had a disability.¹⁸ Nevertheless, the Associate Dean informed OCR that she did not specifically address the complainant's report as disability harassment. Instead, she discussed with the complainant the alleged verbal harassment by Professor 2 regarding the research issue, and then informed the complainant of her options to resolve the matter.¹⁹ The Associate Dean acknowledged that she did not inform the complainant that she could file a complaint of disability harassment at that time. The complainant asserted that the Associate Dean encouraged her to resolve the matter with "the most minimal involvement possible so that the complainant's residency applications would not be impacted in the future" by this incident.²⁰ OCR determined that the School took no further action regarding Complaint 1.²¹

With respect to Complaint 2, OCR determined that in an email to the Associate Dean sent on November 20, 2014, the complainant alleged that "different faculty members violated [her] disability privacy rights" including, "calling out [her] name as a disable[d] person in front of other students, telling [her] [sic] why [she] came to med school with [her] disability, or revealing

¹⁸ The Associate Dean's notes from September 29, 2014, also contain the notation, "questioned disability."

¹⁹ The Associate Dean informed OCR that she explained the complainant had three options to resolve the issue: (1) the complainant could participate in mediation with Professor 2 to discuss the incident; (2) the complainant could contact Professor 2's immediate supervisor; or (3) the complainant could file a formal complaint with the President/Dean.

²⁰ The complainant also asserted that the Associate Dean informed her that an investigation would not be necessary because Professor 2 had already admitted that she "lost her temper."

²¹ The Associate Dean asserted that the complainant later retracted her complaint. However, the School did not provide any documentation to support its assertion. The complainant denied retracting her complaint and/or advising the Associate Dean not to contact Professor 2's supervisor. Furthermore, the complainant provided OCR with documentation dated October 1, 2014, requesting that the Associate Dean discuss the matter with Professor 2's supervisor.

to other students about [her] accommodations.” The Associate Dean acknowledged receiving the complainant’s email of November 20, 2014; however, she informed OCR that she took no further action regarding Complaint 2, other than to respond to the complainant’s questions contained in the email regarding the complainant’s desire to “study long distance.” OCR determined that the School took no further action regarding Complaint 2.

With respect to Complaint 3, OCR determined that the complainant contacted the Associate Dean via email on May 27, 2015.²² In her email, the complainant relayed several concerns regarding “multiple violation acts against my disability”, specifically referencing the incident that occurred on September 26, 2014, in which Professor 2 allegedly accused her of conducting “illegal research” and made comments regarding the complainant’s disability. In the email, the complainant asserted that the Associate Dean had not resolved this incident as she had previously requested. The complainant also again raised the issue of her professors publicly announcing her accommodations during class, and questioning whether the complainant would stay to receive her extended time. The complainant also complained of many grading practices she considered to be unfair.

OCR determined that the Associate Dean contacted the complainant on June 2, 2015, to schedule a meeting to discuss her concerns. OCR determined that the Associate Dean and the Academic Dean participated in a telephone conference with the complainant on June 4, 2015. The Associate Dean informed OCR that they generally discussed the incidents presented in the complainant’s email; however she asserted that the “central theme” was that the complainant wanted her grades reevaluated by her professors. Consequently, the Associate Dean asserted that she and the Academic Dean decided to discuss the grading issue with the complainant’s professors. Both the Associate Dean and the Academic Dean informed OCR that they did not advise the complainant of her right to file a disability harassment complaint, and did not investigate the complainant’s allegations or otherwise take action to determine whether Professors 1, 2, or 3 subjected the complainant to disability-based harassment. OCR determined that the School took no further action regarding Complaint 3.

Based on the foregoing, OCR determined that within Complaints 1, 2, and 3, and during subsequent conversations with the Associate Dean on September 29, 2015, and June 4, 2015, the complainant described or referred to conduct that could have constituted disability harassment. Once a recipient has actual or constructive notice of alleged harassment, the recipient has an obligation to investigate the allegations and take prompt and effective action that is reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects. OCR determined that the School did not engage in any inquiry or investigation regarding the complainant’s concerns raised in each complaint. The School acknowledged to OCR that it did not investigate whether the complainant was subjected to disability harassment by School faculty, as alleged in Complaints 1, 2, and 3.

Therefore, OCR determined that the School has violated the regulation implementing Section 504, at 34 C.F.R. § 104.7(b), by failing to investigate the complainant’s complaints of alleged

²² The complainant also copied the Student Coordinator and Associate Dean of Biomedical Sciences and Research on the email. The Student Coordinator informed OCR that she did not respond to the complainant’s email. The Associate Dean of Biomedical Sciences and Research did not respond to OCR’s request for information.

harassment on the basis of her disability. On December 14, 2015, the School agreed to enter into a resolution agreement to resolve this compliance concern.

OCR conducted its own investigation into the complainant's allegations of disability harassment raised in Complaints 1, 2, and 3, and during conversations with the Associate Dean on September 29, 2015, and June 4, 2015. OCR determined that the complainant alleged that the following incidents occurred:

- On or about September 19, 2014, Professor 1 made several harassing comments when the complainant visited her office to discuss her grade on a recent XXXXXXXX quiz. Specifically, the complainant alleged that Professor 1 stated, “[you] got a C on your quiz which is good considering you are a disabled student!” The complainant additionally asserted that Professor 1 commented, “With your disability condition you may not be able to do well on your course work and you may not want to continue your medical education and consider a different career than medicine.” The complainant further asserted that Professor 1 stated, “You cannot make medical school easier for yourself by getting accommodation[s] on everything” (Incident A).
- On or about September 26, 2015, during a meeting with Professor 2 in her office, Professor 2 made comments regarding the complainant's disability and accused her of conducting “illegal research.” The complainant alleged that Professor 2 accused her of conducting illegal research without appropriate supervision or approval of the School. The complainant also alleged that she questioned her about her disability (Incident B).
- Professors 1, 2, and 3 subjected her to harassment throughout academic year 2014-2015 by publicly announcing her approved accommodation of extended time in front of her classmates during class quizzes or laboratory exams on unspecified dates throughout academic year 2014-2015 (collectively, Incident C).

The complainant identified her husband and three students as witnesses to the alleged harassment. OCR contacted each witness and was able to interview two students (Students 1 and 2, as discussed above in connection with Allegation 3) and the complainant's husband. OCR attempted to interview Professors 1, 2, 3, and 4, and was able to interview Professors 1, 2, and 4.²³

Regarding Incident A, the complainant alleged that on or about September 19, 2014, Professor 1 made several harassing comments to her when she visited Professor 1's office to discuss her grade on a recent genetics quiz. Specifically, the complainant asserted that Professor 1 stated, “[you] got a C on your quiz which is good considering you are a disabled student!” The complainant also asserted that Professor 1 stated, “With your disability condition you may not be able to do well on your course work and you may not want to continue your medical education and consider a different career than medicine;” and “you cannot make medical school easier for yourself by getting accommodation on everything.” Professor 1 denied making the alleged comments. OCR determined that the complainant's husband accompanied the complainant to

²³ As previously noted, OCR was unable to interview Professor 3.

Professor 1's office, and waited in the hallway outside of Professor 1's door while the complainant met with Professor 1. The complainant's husband advised OCR that he could hear Professor 1's comments from the hallway, and corroborated that Professor 1 made the statements the complainant described. The complainant's husband asserted that Professor 1 also stated to the complainant, "You should not be worried because what you have is good enough for you." 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. OCR determined that the evidence corroborated that Professor 1 made derogatory comments about the complainant's disability during a meeting on September 19, 2014.

OCR determined that Professor 1's comments created a hostile environment that was sufficiently serious to interfere with or deny the complainant's participation in or receipt of benefits, services or opportunities in the recipient's program. Therefore, OCR determined that the School has violated the regulation implementing Section 504, at 34 C.F.R. § 104.4, by subjecting the complainant to a hostile environment on the basis of her disability. On December 14, 2015, the School agreed to enter into a resolution agreement to resolve this compliance concern.

With respect to Incident B, Professor 2 acknowledged speaking with the complainant in her office on or about September 26, 2014, and discussing the complainant's research project during this meeting. Professor 2 denied making any comments related to the complainant's disability during this conversation; however, she did acknowledge that she may have "gone overboard" in reprimanding the complainant, as she recalled raising her voice during this discussion. Professor 2 stated that she takes the School's ethical obligations very seriously and was concerned that the complainant's research without appropriate supervision could jeopardize the School's reputation. The complainant did not provide any witnesses who could corroborate her allegations with respect to Incident B. OCR did not find that the complainant's assertion that Professor 2 subjected her to harassment on the basis of her disability as alleged in Incident B was supported by a preponderance of the evidence.

With respect to Incident C, as discussed above with respect to Allegation 3, Professor 1 denied publicly announcing the complainant's accommodations during class at any time. Professor 2 acknowledged that he once stated to the class that students without accommodations should leave the room at the end of the exam. Further, Professor 4 acknowledged making a comment similar to "any student receiving special accommodations should approach me" in or around the last week of October 2014. Student 1 also corroborated that at least one professor engaged in such a practice during academic year 2014-2015. Student 1 informed OCR that he could not recall the names of the professors as there were three professors proctoring the examinations; additionally, he could not provide specific dates when such announcements were made; however, as discussed above, Student 1 provided sufficient detail regarding one incident such that OCR could determine that the preponderance of the evidence supported a determination that Student 1 witnessed a professor publicly announcing students' accommodations. Therefore, regarding Incident C, OCR was able to corroborate that the complainant's accommodations were publicly announced to the class during academic year 2014-2015 on three occasions. However, as discussed above with respect to Allegation 3, OCR determined that there was insufficient evidence to substantiate that the comments created a hostile environment that was sufficiently serious to interfere with or deny the complainant's participation in or receipt of benefits, services

or opportunities in the recipient's program; thus, the conduct did not rise to a level to substantiate a violation of the regulations implementing Section 504.

Section 504 Procedural Requirements

During the course of its investigation, OCR reviewed the School's grievance procedures to determine whether these provide for the prompt and equitable resolution of complaints of discrimination on the basis of disability. OCR reviewed whether the School had: (a) a designated Section 504 coordinator; (b) provided notification of the name, office address, and telephone number of the Section 504 coordinator; (c) provided notice that it does not discriminate on the basis of disability; and, (d) adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination/harassment on the basis of disability.

Designated Section 504 Coordinator

The regulation implementing Section 504, at 34 C.F.R. §104.7(a), states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the requirements of Section 504 and its implementing regulation. The regulation, at 34 C.F.R. §104.8(a), also requires each such recipient to notify participants, beneficiaries, applicants and employees of the identity of its designated coordinator(s).

The School informed OCR that the Student Coordinator is the designated 504 Coordinator for the School. The School asserted that the Student Coordinator's name and contact information are provided to all students during orientation and is included in a PowerPoint presentation presented to all incoming students during orientation. OCR determined that this information is not published on the School's website or in the Student Manual. Based on its review of the various policies, procedures, and other relevant documents the School submitted, including the Diversity Statement, the Student Manual, "Procedure for Filing Complaints" the School's Powerpoint presentation ("Acomodo Razonable en la EMSJB") and the Procedure for Students Request of Reasonable Accommodation, OCR determined that the School has designated at least one person to coordinate its efforts to comply with Section 504; however, the School's materials did not include the identity of the coordinator, other than in the PowerPoint presentation provided to new students during orientation. Accordingly, OCR determined that the School does not provide adequate notice of the identity of the Section 504 Coordinator. Therefore, OCR determined that the School has failed to comply with the regulation implementing Section 504, at 34 C.F.R. §104.8(a).

Notice of Non-Discrimination

The regulation implementing Section 504, 34 C.F.R. § 104.8, requires that recipients notify beneficiaries and others of its obligations under the regulation and/or state that it does not discriminate on the basis of disability.²⁴

²⁴ In addition, the regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Boy Scouts Act contain similar requirements for recipients to notify beneficiaries and others of its obligations under the respective regulation and/or that it does not

OCR determined that the School publishes its non-discrimination notice on its website in various places. OCR determined that the School website contains a “Diversity Statement”²⁵ articulating the School’s commitment to “provide equal access to and opportunity in its programs, facilities, and employment and seeks to attain a diverse learning environment through the recruitment, enrollment, hiring, and retention/graduation of students, faculty, and staff that reflects the current world”; however, it does not state that the School prohibits discrimination and harassment and does not discriminate on the basis of race, color, national origin, sex, age or disability. The School website contains a link to its “Non-discrimination Policy” on its website; however the link is not functional. The School website also contains a link to the Student Manual which includes a statement prohibiting discrimination and specifying the required bases of non-discrimination; however the statement does not state that the prohibition against discrimination extends to its programs and activities, including employment and admission. Another section of the School’s website, entitled “Equal Access to the San Juan Bautista School of Medicine,” states that the School offers equal educational opportunity in its program and services regardless, color, religion, marital status, age, sexual orientation, national origin, disability or veteran status; however, it does not refer to employment. The same webpage includes a statement that the School shall provide equal access to and opportunity in its programs, facilities, and employment; however, it does not refer to the prohibition against discrimination.

Based on the foregoing, OCR determined that the School’s statement of non-discrimination does not provide adequate notice to students and employees that it does not discriminate. Therefore the School has failed to comply with the regulation implementing Section 504, at 34 C.F.R. § 104.8.

Grievance Procedures

The regulation implementing Section 504, at 34 C.F.R § 104.7(b) provides that recipients shall adopt grievance procedures that incorporate appropriate due process standards that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation.

In accordance with OCR policy, elements for determining if procedures are prompt and equitable include whether the procedures: (a) provide for notice to students and employees of procedures, including where complaints can be filed; (b) apply to harassment by employees, students, and third parties; (c) provide for adequate, reliable and impartial investigation, including an opportunity to present witnesses and evidence; (d) have reasonably prompt timeframes for major stages of the grievance process; (e) provide for notice to the parties of the outcome; and (f) provide assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.

A link to the Student Manual on the School’s website also contains the “Procedure for Filing Complaints” (Procedure). Pursuant to the Procedure, students are advised to first contact the

discriminate on the basis of race, color, national origin, sex, age, and certain patriotic youth groups covered by Title 36. (See 34 C.F.R. §§ 100.6(d), 106.9, 110.25, and 108.9, respectively.)

²⁵ <http://www.sanjuanbautista.edu/administration/equal-access-diversity-statement.html>

“Course Coordinator” if he or she considers that his/her “rights have been violated, or an unfair action has been committed against him/her by any faculty member.” Students may then appeal the Course Coordinator’s decision to several faculty members including the Head of the Department, the Associate Dean of Biomedical Sciences, the Associate Dean of Clinical Sciences, or the Academic Dean. The Procedure further specifies that if the action has been committed by any “institutional staff member in a nonacademic relationship,” the student should lodge a complaint with the Associate Dean of Student Affairs. The Procedure does not provide contact information for any of the identified points of contact; nor does it specify whether complaints should be submitted orally or in writing. OCR determined that the School provides adequate notice to students and employees of the Procedure, as they are accessible on the School’s website within the Student Manual. However, the Procedure does not provide adequate notice of where complaints may be filed, and does not specify that complaints can be filed against students, employees, or third parties.

OCR determined that the Procedure does not generally provide for “prompt” and “equitable” resolution of complaints. The Procedure for complaints alleging unfair action or violations of rights by faculty members does not state that the allegations will be investigated. Further, the Procedure states that for complaints involving sexual harassment, discrimination based on race, color, age, sex, nationality, disability or national origin by institutional staff members, the complaint “will be processed according to the regulations and guidelines available for these issues...” or “provisions of applicable law.”²⁶ Additionally, OCR determined that the Procedure does not provide for the presentation of witnesses and evidence, or provide a description of the School’s investigative process. Further, the Procedure does not specify any timeframe for the major stages of the grievance process. Although the Procedure does state that a violation of institutional rules discovered by the Associate Dean of Student Affairs will be referred to the Dean of Administration and Human Resources, it does not provide any detail as to how a substantiated violation will be handled. Finally, the Procedure does not state whether, and how, the complainant and accused will be notified of the outcome of any investigation; and it does not contain an assurance that the School will take steps to correct the discriminatory effects of any harassment on the complainant and others, if appropriate. Therefore, OCR determined that the School failed to adopt and publish grievance procedures for the prompt and equitable resolution of complaints of disability discrimination/harassment, in compliance with the regulation implementing Section 504, at 34 C.F.R § 104.7(b).

On December 14, 2015, the School agreed to implement the enclosed resolution agreement to remedy OCR’s compliance concerns regarding the School’s failure to provide adequate notice of the identity of the Section 504 Coordinator, its non-discrimination notice, and adoption of grievance procedures, in addition to the compliance concerns identified above with respect to Allegations 1 and 4. OCR will monitor the implementation of the enclosed resolution agreement.

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

²⁶ The Procedure does not indicate which regulations or guidelines are available or otherwise indicate which provisions of applicable law are being referenced.

formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may 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 complainant 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, it 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 regarding OCR's determination, please contact Jonathon LeBeau, Compliance Team Investigator, at (646) 428-3790 or jonathon.lebeau@ed.gov, Joy Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

Timothy C.J. Blanchard