

September 1, 2016

Dr. Jorge Iván Vélez-Arocho
President
Pontifical Catholic University of Puerto Rico
2250 Blvd. Luis A. Ferré Aguayo, Suite 564
Ponce, Puerto Rico 00717-9997

Re: Case No. 02-16-2165
Pontifical Catholic University of Puerto Rico

Dear President Vélez-Arocho:

This letter is to notify you of the determination made by the U. S. Department of Education, Office for Civil Rights (OCR), in the above-referenced complaint filed against the Pontifical Catholic University of Puerto Rico (the University). The complainant alleged that the University discriminated against him, on the basis of his disability, by failing to timely respond to his request for academic adjustments and auxiliary aids for the fall 2015 semester, made in July 2015 (Allegation 1). The complainant further alleged that during the fall 2015 semester, the professor for his XXXX course (the Course) discriminated against him, on the basis of his disability, by refusing to allow him to record class lectures, despite having an approved auxiliary aid permitting him to record such lectures (Allegation 2). The complainant also alleged that the professor subjected him to harassment because of his disability, by making derogatory comments about his disability in or around September 2015; and, stating that he “did not have the capacity” to complete the Course in or around November 2015 (Allegation 3). The complainant additionally alleged that the University discriminated against him, on the basis of his disability, by failing to respond appropriately to complaints he made to the Dean of the XXXXXXXX of XXXXXXXX XXXXXXXXXXXXXXXX (the dean) in or around October 2015, and to the Director of the XXXXXXXX of XXXXXXXX XXXXXXXXXXXXXXXX (the director) in or around December 2015, regarding the professor’s alleged failure to allow him to record lectures and the alleged disability-based harassment by the professor (Allegation 4). The complainant further alleged that the University discriminated against him, on the basis of his disability, by failing to timely respond to his request for academic adjustments and auxiliary aids for the spring 2016 semester, made in January 2016 (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 or activities receiving financial assistance

from the U.S. Department of Education (the Department). The University 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 reviewed documentation that the complainant and the University submitted. OCR also interviewed the complainant and University personnel. OCR made the following determinations.

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. OCR determined that the University has not designated any employee as the University's 504 Coordinator.¹ Therefore, OCR determined that the University 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, at 34 C.F.R. § 104.8(a), requires that recipients notify participants, beneficiaries, applicants and employees that it does not discriminate on the basis of disability.² The notification is to state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The regulation, at 34 C.F.R. §104.8(a), also requires each such recipient to include in the notice the identity of its designated Section 504 coordinator(s).

The University informed OCR that it does not publish a single non-discrimination notice, and that it publishes several non-discrimination notices in various publications. For example, OCR determined that the University's Student Handbook, or "Reglamento Estudiante Actualizado", contains a statement that the University does not discriminate on the basis of religion, age, race, color, national origin, or disability in admissions, economic assistance, or access to programs and activities. This statement, however, does not identify the University's Section 504

¹ The University informed OCR that the Director of the University's Office of Services to Persons with Disabilities, or Oficina de Servicios a Personas con Impedimentos (OSPI) is responsible for investigating complaints alleging that professors are not providing students with their approved academic adjustments; and the OSPIXXXXXXXXX acknowledged having this responsibility. She also asserted that she is responsible for investigating other complaints regarding accommodation issues, but stated that she has not received any such complaints in the past fifteen years and does not investigate complaints filed by employees. The OSPI XXXXXXXXX informed OCR that she provides training to University faculty, staff, and students, regarding the University's obligations under Section 504; however, she acknowledged that she has not been officially designated as the Section 504 coordinator, nor has that designation been published anywhere.

² 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 of America Equal Access Act of 2001 contain similar requirements for recipients to notify beneficiaries and others of its obligations under the respective regulation that it does not 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.)

coordinator(s).³ The University's Undergraduate Catalog contains a statement that the University does not discriminate on the basis of "race, color, national and ethnic origin in the administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs." This statement, however, does not include a notice of non-discrimination on the basis of disability and does not identify the University's Section 504 coordinator(s).⁴ Based on the foregoing, OCR determined that the University's statements of non-discrimination fail to comply with the regulation implementing Section 504, at 34 C.F.R. § 104.8(a).

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. 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 discrimination and 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 written 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.

OCR determined that the University's Reasonable Accommodation Policy (the policy), located on the University's website and shared with new students during an annual orientation, is the only policy governing the investigation of complaints of discrimination and/or harassment on the basis of disability. Pursuant to the policy, the University's the Director of the University's Office of Services to Persons with Disabilities, or Oficina de Servicios a Personas con Impedimentos (OSPI) is designated as the entity responsible for receiving and responding to complaints that a student is not being provided with his/her approved academic adjustments; however, the policy does not provide the identity of the employee responsible for receiving such complaints, or provide contact information. The policy further specifies that if a student wishes to file a complaint against OSPI, he or she should contact the Vice President for Academic Affairs.⁵ OCR determined that the policy does not apply to employees or third parties; does not state that allegations of disability discrimination and harassment will be investigated; does not provide for the presentation of witnesses and evidence, or provide a description of the University's investigative process; does not specify any timeframe for the major stages of the grievance process; does not provide any detail as to how a substantiated violation will be handled; 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 University will take

³ OCR notes that this statement does not prohibit discrimination on the basis of sex, which is required by the regulation implementing Title IX of the Education Amendments of 1972.

⁴ Neither does it state that it prohibits discrimination on the basis of sex or age.

⁵ The OSPIXXXXXXXXX informed OCR that if a student disagrees with the academic adjustments approved by OSPI, he or she may contact the "Comité Asesor de Asuntos an Estudiantes con Impedimentos ," which is a University committee consisting of various University staff from several offices/departments.

steps to correct the effects of any discrimination and/or harassment on the complainant and others, if appropriate. Therefore, OCR determined that the University failed to adopt grievance procedures for the prompt and equitable resolution of complaints of disability discrimination and harassment, in compliance with the regulation implementing Section 504, at 34 C.F.R. § 104.7(b).

Allegation 1:

With respect to Allegation 1, the complainant alleged that the University discriminated against him, on the basis of his disability, by failing to timely respond to his request for academic adjustments and auxiliary aids for the fall 2015 semester, made in July 2015. The complainant asserted that he initially contacted OSPI to request academic adjustments in or around July 2015, but that OSPI did not approve his request until October 2015.

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 provision 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 2015-2016, the complainant was enrolled as a first year student in the University's XXXXXXXX of XXXXXXXXX XXXXXXXXXXXXXXXXXXXX with a concentration in XXXXXXXXXXXXXXXX XXXXXXXX. The University denied receiving a request for academic adjustments from the complainant in or around July 2015. Both the OSPI XXXXXXXXX and the complainant's XXXX XXXXXXXX from OSPI asserted that the complainant did not contact OSPI to request academic adjustments until October 14, 2015. The University provided to OCR a copy of an "Initial Student Information and Intervention" worksheet signed by the complainant and dated October 14, 2015; and, a copy of a "Request for the Student to Provide the Names of Professors," which was signed by the complainant and dated October 15, 2015. The OSPI XXXXXXXXX informed OCR that students are provided with these documents upon request for academic adjustments from the University.

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 did not find that the preponderance of the evidence substantiated the complainant's assertion that he first requested academic adjustments in or around July 2015,⁶ as the documentation the University provided indicated that the complainant did not contact OSPI until at least October 14, 2015, and OCR did not find any evidence to indicate that the complainant

⁶ OCR contacted the complainant for additional information on two occasions in August 2016. The complainant did not respond to OCR's requests for information.

requested academic adjustments prior to that date. Moreover, OCR determined that OSPI approved the complainant's request for academic adjustments on October 15, 2015, only one day after he made the request. Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University discriminated against him, on the basis of his disability, by failing to timely respond to his request for academic adjustments and auxiliary aids for the fall 2015 semester. Accordingly, OCR will take no further action with respect to Allegation 1.

Allegation 2:

With respect to Allegation 2, the complainant alleged that during the fall 2015 semester, the professor for the Course discriminated against him, on the basis of his disability, by refusing to allow him to record class lectures, despite having an approved auxiliary aid permitting him to do so. In support of Allegation 2, the complainant provided to OCR a copy of the second page of his Reasonable Accommodation Plan on which the professor noted, "the course XXXX XXX is not suitable for the use of a tape recorder; the student must draw on the computer."

OCR determined that pursuant to a Reasonable Accommodation Plan dated October 15, 2015, the complainant was approved to receive academic adjustments of additional testing time (30 minutes); preferential seating at the front of the classroom; the use of a tape recorder during academic classes; access to the assistive technology classroom in the University's library; and, training regarding the use of assistive technology. In accordance with the University's procedures, the complainant notified his professors of the approved academic adjustments by delivering a copy of the Reasonable Accommodation Plan to them for their signature on or about October 19, 2015. The complainant asserted that when the professor signed his Reasonable Accommodation Plan and wrote the aforementioned comment, she informed the complainant that he would not be permitted to record the class lectures.

The professor acknowledged that she received the Student's Reasonable Accommodation Plan between October 19, 2015, and October 26, 2015. The professor further acknowledged writing the comment on the complainant's Reasonable Accommodation Plan, but asserted that it was a comment intended for OSPI and not an indication that she would not permit the complainant to use the tape recorder during class. The professor denied telling the complainant that he could not record class lectures. The professor explained that the Course is an introductory course to computer programming that consists of a class lecture by the professor accompanied by a PowerPoint presentation. The professor informed OCR that she also demonstrates computer programming examples by projecting them onto a screen or drawing them on a blackboard; the students then use their own computers in the classroom to solve computer programming questions. The professor asserted that as a result of the class structure, she did not think that a tape recorder would be useful to the complainant; therefore, she wrote the comment on the Reasonable Accommodation Plan to inform OSPI of this; however, the professor denied that she ever prohibited the complainant from using a tape recorder and asserted that the complainant never requested to use it.

The OSPI XXXXXXXXX informed OCR that in accordance with the University's procedures, students are required to return the Reasonable Accommodation Plans to OSPI after obtaining the

signatures of their professors, and that the complainant did so on or about October 26, 2015. Both the OSPI XXXXXXXX and the OSPI XXXX XXXXXXXX acknowledged receiving the Reasonable Accommodation Plan with the professor's comment, but asserted that the complainant did not express concerns regarding his ability to tape record the Course at that time; however, both the OSPI XXXXXXXX and OSPIXXXX XXXXXXXX acknowledged that the complainant subsequently contacted them with concerns about the Course, in or around November 2015. The OSPI XXXX XXXXXXXX informed OCR that she spoke with the professor regarding her comment on or about November 2, 2015, and that during this conversation she informed the professor that the complainant was entitled to use this academic adjustment. The OSPI XXXX XXXXXXXX asserted that the professor reiterated that the Course was not suitable for tape recording but she did not state that she would not permit the complainant to use his academic adjustment. The OSPI XXXX XXXXXXXX asserted that she subsequently informed the complainant of her meeting with the professor on or about November 3, 2015, and that he was entitled to use the tape recorder during the Course.

Based on the above, OCR determined that although the professor wrote a comment on the Reasonable Accommodation Plan that the Course was not suitable for the use of a tape recorder, the complainant never requested to use a tape recorder during the Course and the professor never prohibited him from doing so. Further, as of November 3, 2015, approximately one week after providing the Reasonable Accommodation Plan to the professor, the OSPIXXXX XXXXXXXX spoke with the professor about the complainant's concerns about the comment, and advised both the professor and the complainant that the complainant was entitled to use the tape recorder during the Course. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that during the fall 2015 semester, the professor for the Course discriminated against him, on the basis of his disability, by refusing to allow him to record class lectures. Accordingly, OCR will take no further action with respect to Allegation 2.

Allegation 3:

With respect to Allegation 3, the complainant alleged that the professor subjected him to harassment because of his disability, by making derogatory comments about his disability in or around September 2015 (Incident 1); and, stating that he "did not have the capacity" to complete the Course in or around November 2015 (Incident 2). 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.

The professor denied ever making the comments the complainant alleged in Incidents 1 and 2. The complainant did not identify any witnesses to corroborate his version of the events. Other

University staff members who were present when the harassment allegedly occurred denied hearing the professor make these comments.

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 did not find that a preponderance of the evidence substantiates the complainant's assertion that the professor made derogatory comments regarding his disability, or stated that he did not have the capacity to complete the Course.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the professor subjected him to harassment because of his disability by making derogatory comments about his disability in or around September 2015; and, stating that the complainant "did not have the capacity" to complete the Course in or around November 2015. Accordingly, OCR will take no further action with respect to Allegation 3.

Allegation 4:

With respect to Allegation 4, the complainant alleged that the University failed to respond appropriately to complaints he made to the dean in or around October 2015 (complaint 1) and the director in or around December 2015 (complaint 2), regarding the professor's alleged failure to allow him to record lectures (as described in Allegation 2) and the alleged disability harassment by the professor (as described in Allegation 3).

With respect to complaint 1, the complainant asserted that in or around October 2015, he orally informed the dean that the professor would not permit him to record class lectures even though OSPI had approved the use of a tape recorder as an academic adjustment. The complainant asserted that the dean "didn't care" when he reported this issue, and told him that the University cannot do anything "about the situation with the professor" because "the students don't complain about that." The complainant further asserted that the dean informed him that he could not help him because he had an "incomplete" in the Course because he did not complete an examination.

OCR determined that sometime during the first few days of November 2015, the complainant met with the dean and complained that the professor would not let him record class lectures despite OSPI having provided the complainant with permission to do so as an academic adjustment. OCR determined that the dean referred the matter to the director of the XXXXXXXX of XXXXXXXX XXXXXXXXXXXXXXXX. OCR further determined that on or about November 16, 2015, the complainant, the professor, and the director met to discuss the complainant's allegation that the professor prohibited him from using his approved academic adjustment of a tape recorder during the fall 2015 semester. During this meeting, the professor explained that because the class lectures consisted of computer demonstrations and written instructions, she believed that the Course was not suitable for audio recording; however, the professor informed the complainant that he was permitted to use a tape recorder to record the class lectures as an academic adjustment if he so desired.

Based on the foregoing, OCR determined that shortly after receiving complaint 1 from the dean, the director investigated the complaint; met with the complainant and the professor on or about

November 16, 2015, to discuss his allegations; and obtained confirmation from the professor that she would permit the complainant to use the tape recorder during her class. The complainant did not allege that, thereafter, the professor prohibited him from using his tape recorder during the Course.

With respect to complaint 2, the complainant alleged that in or around December 2015, he orally informed the XXXXXXXXX of OSPI that during the fall 2015 semester, the professor would not permit him to record class lectures, and that the professor had subjected him to harassment on the basis of his disability. The complainant asserted that the director “ignored” his complaint and that the University administrators directed the OSPI XXXXXXXXX not to refer the complainant to their office again.

The director informed OCR that the complainant frequently visited her office during the fall 2015 semester; and on one occasion, on or about November 9, 2015, the complainant told her that he was having difficulty using his academic adjustment of a tape recorder in the Course. As stated above, OCR determined that the director participated in a meeting with the complainant and the professor to discuss this issue on November 16, 2015. The director stated that she recalled meeting with the complainant and the dean subsequent to that meeting, and that the complainant again raised substantially the same issues that had been previously discussed on November 16, 2015. The director denied that the complainant raised any allegations of disability harassment during either meeting.

OCR determined that on or about December 7, 2015, the complainant reported to the dean that the professor had subjected him to harassment on the basis of his disability by allegedly raising her voice during a meeting, and telling him that he could not pass the Course as a result of his disability. The complainant asserted to the dean that the director had witnessed the alleged harassment. OCR determined that in response to the complainant’s report of alleged harassment, the dean immediately called the director to question her. The director denied that the professor had made such a comment in her presence. The complainant did not provide OCR with any information to corroborate his allegation that the director failed to respond appropriately to a complaint of disability harassment in or around December 2015.

Based on all of the above, OCR determined that the University promptly investigated the complainant’s concerns raised in complaints 1 and 2. The University took action to ensure that the complainant was not denied the academic adjustments to which he was entitled by obtaining the professor’s assurance that she would permit the complainant to record the class lectures; and the University could not corroborate that complaint 2 occurred as the complainant alleged. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the University failed to respond appropriately to complaints he made to the dean in or around October 2015, and to the director in or around December 2015, regarding the professor’s alleged failure to allow him to record lectures and the alleged disability-based harassment by the professor. Accordingly, OCR will take no further action with respect to Allegation 4.

Allegation 5:

With respect to Allegation 5, the complainant alleged that the University discriminated against him, on the basis of his disability, by failing to timely respond to his request for academic adjustments and auxiliary aids for the spring 2016 semester, made in January 2016. The complainant asserted that as of May 2016, OSPI had still not responded to his request for academic adjustments; and that as a result of the delay, he did not receive academic adjustments in any of his courses during the spring 2016 semester. The complainant did not provide any evidence in support of his allegation.

OCR determined that students are required to reapply for academic adjustments prior to the start of each semester so that OSPI may determine which academic adjustments may be appropriate for each course. The University denied ever receiving a request from the complainant for academic adjustments and auxiliary aids for the spring 2016 semester. Furthermore, both the OSPI XXXXXXXXXX and OSPI XXXX XXXXXXXX asserted that they did not have any contact with the complainant after November 2015.

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 did not find that the preponderance of the evidence substantiated the complainant's assertion that he requested academic adjustments in or around January 2016 for the spring 2016 semester.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University discriminated against him, on the basis of his disability, by failing to timely respond to his request for academic adjustments and auxiliary aids for the spring 2016 semester. Accordingly, OCR will take no further action with respect to Allegation 5.

On August 31, 2016, the University agreed to implement the enclosed resolution agreement to remedy the University's non-compliance with the regulation implementing Section 504 regarding the designation of a Section 504 Coordinator, notice of non-discrimination, and adoption of grievance procedures. 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 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 University 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 Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or jessica.daye@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.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXX XXXXXXXX XXXXXXX, Esq.