

RESOLUTION AGREEMENT

San Juan College (New Mexico) Case Number 08-16-2150

The U.S. Department of Education, Office for Civil Rights (“OCR”) received a complaint against San Juan College (“College”) alleging that the College discriminated against the Complainant on the basis of disability by failing to accommodate his disability-related needs, which culminated in his failure of at least one class and withdrawal from the College in the spring 2016 semester. OCR investigated the allegation and found that the College violated Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) in that it (1) refused to provide Complainant a 72-hour waiting period to reschedule tests if needed because of his disability-related treatment; (2) denied his request for a reduced course load to complete his degree; and (3) failed to comply with Section 504 and Title II procedural requirements. The College agrees to implement the following terms of this Resolution Agreement.

1. The College will refund to the Complainant the following amounts:
 - a. Via refund to the Complainant’s student loan servicer(s), tuition and fees for his three Spring 2016 semester classes, XXX;
 - b. Via refund to the Complainant’s student loan servicer(s), tuition and fees for his Spring 2015 semester NRSG-XXX class; and
 - c. \$XXX for out-of-pocket expenses on textbooks and other school-related supplies that the Complainant incurred during the Spring 2016 semester.

REPORTING REQUIREMENT: Within 60 days of this Agreement, the College will provide OCR with documentation that it has provided this refund to the Complainant and/or his student loan servicer(s).

2. The College will provide the Complainant with the following: (1) a letter confirming his attendance at San Juan College identifying the courses he enrolled for, his grades and that he left the College in good standing in support of his transfer to another nursing degree program; and (2) if during the monitoring of this Agreement, the Complainant completes the necessary prerequisites to be eligible to take the Colorado or New Mexico LPN exam, the College shall, on the request of the Complainant to OCR, provide any documentation necessary from the College to document the Complainant’s eligibility (*e.g.*, as applicable, confirmation of any coursework taken at the College, written communication from the Director of the Nursing Program requesting permission for the Complainant to test for LPN licensure).

REPORTING REQUIREMENT: As to (1), within 60 days of this Agreement, the College will provide OCR with documentation that it has provided this letter to the Complainant. As to (2), if during the monitoring of this Agreement, the Complainant completes the necessary prerequisites to be eligible to take the Colorado or New Mexico LPN exam, the Complainant shall inform OCR in writing (1) which exam he is eligible to take, (2) the date he intends to take the exam, and (3) the documentation needed from the

College. OCR shall communicate in writing that information to the College, and within 30 days of OCR's communication, the College shall provide the documentation to the Complainant and OCR. Additionally, to the extent the Complainant has questions relating to the documentation necessary, the College shall cooperate with the Complainant and OCR to promptly resolve those questions.

3. The College shall indicate to Complainant that, based on the facts present in this case, the College does not believe he is currently subject to the two-year ban imposed by the New Mexico Nursing Consortium on Nursing students reapplying to New Mexico Nursing programs after withdrawal by, at a minimum, sending a letter to the Complainant explaining that he is welcome to register in the College's Nursing Program, conditioned on taking course NRS-191 (pursuant to and as discussed further in Term 4).

REPORTING REQUIREMENT: Within 60 days of this Agreement, the College will provide OCR with documentation, including but not limited to its letter to the Complainant.

4. The College shall provide one of the following two individual remedies to the Complainant with respect to his decision whether to continue his nursing education, both of which are contingent upon the Complainant informing OCR in writing by February 28, 2018 of which of the following two options he has elected. This Term 4 shall not apply if (1) the Complainant does not contact OCR in writing by February 28, 2018, or (2) informs OCR that he will not return to any nursing degree program.
 - a. If the Complainant informs OCR in writing by February 28, 2018 that he has elected to return to the College, the following terms will apply:
 - i. The College will accept registration by the Complainant no later than the Fall 2018 semester. The College will undergo an interactive process with the Complainant to determine his start date and his accommodations (including but not limited to his course schedule) for the remainder of his time in the Nursing Program.
 - ii. The Complainant's registration will be conditioned upon his registering for and taking course NRS-191 at its next scheduled offering before registering to take any other additional College nursing courses. The College agrees to provide a scholarship to Complainant to cover in full the costs, fees, and tuition for this course.
 - iii. The College will designate one single contact person for the Complainant to communicate with regarding his accommodations for all of his remaining semester(s) in the Nursing Program.
 - b. If the Complainant informs OCR in writing by February 28, 2018 that he has elected to apply to return to a nursing degree program other than the College (to begin no later than the Fall 2018 semester), the following terms shall apply:
 - i. The Complainant will indicate in his communication by February 28, 2018 (1) where he has elected to apply to return to a nursing degree program, and (2) when the program has told applicants to expect an admissions decision, which for purposes of this Agreement shall be not later than August 31, 2018.

- ii. No later than August 31, 2018, the Complainant will inform OCR which, if any, credits from the College will *not* transfer to his new program.
- iii. If any nursing credits will *not* transfer to his new program, OCR shall communicate in writing that information to the College, and the College will reimburse the Complainant (via refund to his student loan servicer(s)) for tuition and fees for those nursing courses that will *not* transfer.
- iv. If the Complainant elects to return to a program to which all credits will transfer, OCR shall communicate in writing to the College that this Term 4(b) shall not apply.

REPORTING REQUIREMENT: The College’s Reporting Requirements shall be pursuant to which option the Complainant elects:

- a. If the Complainant elects the option at 4(a), the following reporting requirements will apply.

- i. Single Contact Person.

- (a) No later than two weeks before the start of the Complainant’s first re-enrolled semester, the College will provide to OCR, for OCR’s approval, the name of the designated contact person.
- (b) Within 7 days of OCR’s approval, the College will (1) share the name of the approved contact person with the Complainant, and (2) provide documentation to OCR that it has done so.

- ii. Interactive Process.

- (a) The College will make individualized, case-by-case determinations regarding the Complainant’s start date and all accommodations for the Complainant (including but not limited to his course schedule and any future accommodations requests) and will document each determination. It is understood that this will be the revised standard accommodation process (pursuant to Term 5 of this Agreement) at the College and not a separate process outside of the revised standard accommodation process. Reporting to OCR shall be as included in and required under “Semester Reporting” below. At a minimum, the College will submit to OCR, for OCR’s approval:
 - i. the names and titles of the individuals who participating in making the determination, which shall include at a minimum, (1) member(s) of the DSO staff and the course(s) for which the accommodation is/are sought, and (2) the Complainant for some or all of the process;
 - ii. the information considered;
 - iii. the basis for the determination;
 - iv. a description of the process by which the determination was reached, including when each stage of the process occurred;
 - v. when and the nature of how the Complainant was involved in the process; and
 - vi. when and how the determination was conveyed to the Complainant.

- iii. Semester Reporting.

- (a) Before the start of each of the Complainant’s remaining semester(s), the designated contact person will meet with the Complainant to discuss how

the College can meet his needs in the coming semester and to agree on and approve any reasonable accommodations that will be implemented for that semester. The College will ensure that the Complainant receives his approved academic adjustments for each of her remaining semester(s). Within 15 calendar days of the start of each of the Complainant's remaining semester(s), the College will provide to OCR, for OCR's approval, documentation of the date and time of the meeting between the Complainant and the designated contact person and a summary of the discussion, including a list of approved accommodations; or alternatively, a statement and documentation indicating that the Complainant declined the meeting. The College will also include documentation as to any interactive process that has occurred during the time period being reported.

(b) At the completion of each of the Complainant's remaining semester(s), the College will provide a report to OCR, for OCR's approval, summarizing the accommodations provided to the Complainant, the efficacy of those adjustments, and a list of the Complainant's grades for the semester. The College will also include documentation as to any interactive process that has occurred.

- b. If the Complainant elects the option at 4(b), the following reporting requirements will apply. Within 30 days of any communication from OCR that any credits will *not* transfer to Complainant's new school, the College will provide OCR with documentation that it has provided the required refund to the Complainant's student loan servicer(s).
5. The College will revise its policies and procedures for requesting academic adjustments ("accommodations") to ensure that any faculty input as to whether any academic requirements are essential to the instruction being pursued or to any directly related licensing requirements is provided and accounted for before accommodations are issued to students.

REPORTING REQUIREMENT: Within 60 days of this Agreement, the College will provide OCR, for OCR's approval, its revised draft accommodations policies and procedures.

6. The College will revise its grievance policies and procedures to expressly provide for resolution of complaints of disability discrimination, incorporating appropriate due process standards ensuring that a process exists to resolve such complaints promptly and equitably consistent with the requirements of 34 C.F.R. § 104.7.

REPORTING REQUIREMENT: Within 60 days of this Agreement, the College will provide OCR, for OCR's approval, its revised draft grievance policies and procedures.

7. The College will designate at least one person as a Section 504 and Title II Coordinator(s) to comply with the requirements of Section 504 and Title II and 34 C.F.R. § 104.7 and 28 C.F.R. § 35.107.

REPORTING REQUIREMENT: Within 60 days of this Agreement, the College will provide for OCR's review the designated Section 504 and Title II Coordinator(s)'s credentials and qualifications, which demonstrate the Section 504 and Title II Coordinator(s)'s ability to appropriately meet the College's compliance obligations.

If OCR determines that the designated individual(s) lack the necessary qualifications, the College will develop a plan for immediately providing relevant training to the individual(s). Within 30 calendar days of notification from OCR that training is necessary, any necessary training must be completed. Within 45 calendar days of notification from OCR that training is necessary, the College will provide to OCR documentation that the designee(s) have completed the training.

8. The College will revise its Notice of Non-Discrimination to identify the individual(s) designated as its Section 504 and Title II Coordinator(s) pursuant to Term 8 of this Agreement.

REPORTING REQUIREMENT: Within 60 days of this Agreement, the College will provide OCR, for OCR's approval, its revised notice of nondiscrimination.

9. Within 30 days of OCR's approval of the revised policies and procedures identified in Terms 5-6, the designee(s) identified in Term 7, and the revised notice identified in Term 8, the College will adopt, implement, and publish and distribute the revised policies, procedures, and notice, including in its student handbooks and online materials.

REPORTING REQUIREMENT: Within 60 days of OCR's approval, the College will provide OCR documentation that it has adopted, implemented, and published the revised policies, procedures, and notice, including a list of locations, including the internet and student handbooks, where the College has published the revised policies and notice.

10. Within 15 days of the adoption, implementation, and publication of the approved policies, procedures, and notice, the College will provide a memo to all faculty and staff (1) informing the recipients of the changes to the College's accommodations, withdrawals, and grievance policies and procedures; (2) explaining the College's affirmative obligation to seek suitable means of reasonably accommodating students with disabilities; and (3) reminding the recipients that the College's Administrative Withdrawal Policy may be applicable to students seeking disability-related medical withdrawals.

REPORTING REQUIREMENT: Within 15 days after the College has issued the memo, the College will provide OCR with a copy of the memo and documentation that it was provided via email or other means to all College faculty and staff.

11. Within 15 days of the adoption and implementation of the approved policies, procedures, and notice, the College will provide an email to all students, explaining that it has changed its policies and procedures regarding the grievance procedures for complaints of disability discrimination and requests for academic adjustments/accommodations, and

that its Administrative Withdrawal Policy may be applicable to students seeking disability-related medical withdrawals. The letter will explain that changes have been made to (1) to expressly provide for resolution of complaints of disability discrimination and to ensure that a process exists to resolve such complaints promptly and equitably; (2) ensure that any faculty input as to accommodations is provided and accounted for before accommodations are issued to students; and (3) create a process for disability-related medical withdrawals. Additionally, the letter will invite students to contact the Disability Services Office if they feel they have been inappropriately denied accommodations or a medical withdrawal.

REPORTING REQUIREMENT: Within 15 days after the College's e-mail, the College will provide OCR with a copy of the email, showing it was sent to all students.

12. The College will provide training to its Vice President for Learning, Vice President for Student Services, and all faculty, staff, and administration in the Nursing Program regarding the College's revised policies and procedures, that the College's Administrative Withdrawal Policy may be applicable to students seeking disability-related medical withdrawals, and the requirements of Section 504 and Title II, including but not limited to the affirmative obligation to seek suitable means of reasonably accommodating students with disabilities.

REPORTING REQUIREMENT A: Within 90 days of this Agreement, the College will provide OCR its draft training materials; identify who will be providing the training, by name, title, and qualifications; and provide a list of personnel required to participate in the training, by name and title.

REPORTING REQUIREMENT B: Within 60 days of OCR's approval, the College will provide documentation demonstrating that the training was provided and a copy of the training sign-in sheets.

The College understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College, interview College staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this Agreement and is in compliance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation Part 104, and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which were at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

The College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

San Juan College
By XXX, its Executive Vice President

Date