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JUDGMENT, COURT OF APPEALS
COMMONWEALTH OF PUERTO RICO
(JUNE 8, 2023)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS
SPECIAL PANEL

DR. LUIS S. ARANA SANTIAGO,

Appellant(s),

v.

DR. LUIS TAPIA MALDONADO, CHANCELLOR OF THE UNIVERSITY OF PUERTO RICO IN UTUADO; DR. JORGE HADDOCK ACEVEDO, PRESIDENT OF UPR; GOVERNING BOARD OF UPR,

Appellee(s).

KLRA202100375

Review of Administrative decision issued by the University of Puerto Rico, Governing Board of UPR
Civil No.: JG 20-08
Re: Disciplinary Action

Before: Bermudez TORRES, president, Judge, Rivera MARCHAND, Judge, Barresi RAMOS, Judge, Mateu MELENDEZ, Judge.

BARRESI RAMOS, PRESENTING JUDGE

SENTENCE

In San Juan, Puerto Rico, today, June 08, 2023.

Appearing before this Court of Appeals, **Dr. Luis Arana Santiago (Dr. Arana Santiago)**, on his own behalf, through an appeal filed on July 14, 2021. Requesting in writing that we review the Governing Board's Decision to Appeal (Decision) issued on May 5, 2021, by the **Governing Board of the University of Puerto Rico (Governing Board)**.[1] Through this *Decision*, the **Governing Board** declared the appeal inadmissible and confirmed the determination of Dr. **Jorge Haddock Acevedo**, president of the **University of Puerto Rico (UPR)**, as decreed on October 8, 2020. In other words, the opinion of Dr. **Luis A. Tapia Maldonado**, Rector of the **University of Puerto Rico in Utuado (UPRU)**, issued on December 20, 2019, in which it was resolved to remove Dr. **Arana Santiago** from his position as professor and separate him from any link with **UPR**.

We present the factual and procedural background that accompanies the present dispute.

I.

Dr. **Arana Santiago** was a professor at **UPRU**. During the second semester of academic year 2017-

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[1] This determination was notified and filed on May 13, 2021. *See* Appendix, pp. 337-339.

2018, he taught the MATE 3012 course.[2] On May 23, 2018, in the afternoon, several students enrolled in the aforementioned class went to the Office of the Student Attorney (SA) where they filed a complaint regarding Dr. **Arana Santiago**'s performance in the classroom. The SA instructed the students to submit their claims in writing to the Deanery of Academic Affairs.[3] The next day, during morning hours, the students went to the offices of the Dean of Academic Affairs and filed a written complaint with Ms. Vivian Velez Vera (Dean Velez Vera), Acting Dean.[4]

In response to the students' complaint, Dean Velez Vera summoned the students for a meeting with Mrs. Maria C. Rodriguez Sierra, Dean of Students

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[2] The record shows that this semester began during the month of February 2018, as the start was delayed due to Hurricane Maria.

[3] *See* Appendix, p. 353.

[4] The students expressed the following:

> "The classroom environment is totally uncomfortable due to inappropriate comments and insinuations directed at the ladies in the classroom, and the group in general also received derogatory comments. The classmate Genesis Velez has been the most harmed in this situation due to the constant comments and gestures directed at her person, making her feel uncomfortable in front of the group. We are extremely concerned about this situation because there are graduates in the group and colleagues who need this class as a requirement to transfer to another campus. We hope that the situation is addressed as soon as possible, and that the necessary actions (sic) are taken." *See* Appendix, p. 6.

(Dean Rodriguez Sierra).[5] The students as a group were consistent in expressing that Dr. **Arana Santiago**: (1) was going to fail the entire group in the course; (2) made derogatory comments to the group about its performance in the course; and, (3) made improper remarks, with strong connotations directed at the student Genesis Velez Feliciano. In addition, they emphatically requested an intervention in the matter and for prioritized or precautionary measures to be taken. As part of the aforementioned meeting, minutes were drafted.[6]

That same day, Dean Velez Vera and Dean Rodriguez Sierra met with the student, Genesis Velez Feliciano, in private. She testified regarding the inappropriate behavior of Dr. **Arana Santiago** toward her person.[7] In particular, she stated that Dr. **Arana Santiago** frequently commented that she seemed to like strong men and expensive cars; and seemed to like parties. She stated that, on one occasion, Dr. **Arana Santiago** brought his face close to hers. She added that he continually expressed to her that maybe she believed that her boyfriend could solve mathematical problems in his mind. Ms. Velez Feliciano stressed that Dr. **Arana Santiago**'s gestures and expressions were not welcome. She also expressed that she was afraid to personally express to Dr. **Arana Santiago** her discomfort at such attitudes

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[5] *Id.*, p. 354. *See also*, transcript of Oral Evidence (TPO, Spanish acronym) of 31 October 2021, testimony of Dean Velez Vera, pp. 38-39.

[6] *See* Appendix, pp. 7-9.

[7] *Id.*, pp. 13-15.

toward her person. She stated that she was interested in filing a formal complaint.

The same day, in the afternoon, both Deans met with Dr. **Arana Santiago** and informed him that the purpose of the meeting was to expose the complaints received from the students about his statements directed at the student Velez Feliciano as well as his comments directed to the rest of the group of students, which have created a hostile environment in the classroom.[8] For her part, Dean Velez Vera explained to Dr. **Arana Santiago** that she would give him a copy of the minutes with a summary of what had happened at the meeting so that he could have the opportunity to defend himself against the aforementioned complaints.[9]

That same night, the Deans contacted Mrs. Marisol Diaz Ocasio, the Student Attorney (SA), to inform her about the events that took place between Dr. **Arana Santiago** and the students.[10]

Thus, on June 4, 2018, the Deans, Professor Jorge Torres Bauza, director of the Department of Natural Sciences, and immediate supervisor of Dr. **Arana Santiago**, met with the student Velez Feliciano and the other students. Ms. Velez Feliciano gave a statement against Dr. **Arana Santiago** that was signed by the

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[8] *Id.*, p. 356. *See, also*, transcript of oral evidence (TPO) of October 31, 2019, Testimony of Dean Velez Vera, p. 45.

[9] *Id.*

[10] Transcript of Oral Evidence (TPO) of November 1, 2019, Testimony of Student Attorney Diaz Ocasio (SA), p. 36.

SA, the Deans and Professor Torres Bauza.[11] That same day, Professor Torres Bauza met with Dr. **Arana Santiago** and personally handed him a copy of the statement by student Velez Feliciano.[12] At the meeting, he was advised of his right to present his position or defenses regarding the complaint.[13] After reading it, Dr. **Arana Santiago** denied the comments expressed therein.[14]

On June 5, 2018, student Velez Feliciano signed a Title IX sexual harassment form against Dr. **Arana Santiago**.[15] Days later, on June 28, 2018, the Rector of UPRU met with Dr. **Arana Santiago** and reiterated that he was the subject of an investigation due to a complaint filed by the student Velez Feliciano.[16] Likewise, he reminded him that on a previous occasion he was found liable in a sexual harassment investigation at the university. Due to that case, Dr. **Arana Santiago** [was] suspended for six (6) months.[17]

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[11] *See* Appendix, p. 11.

[12] *Id.*, p. 358.

[13] *Id.*

[14] *Id.*

[15] *Id.*, pp. 17-18. In this document, Ms. Velez Feliciano alleged that she was removed from the classroom and was interested in Dr. **Arana Santiago** being admonished so that this type of behavior would not happen again.

[16] *Id.*, p. 23.

[17] *Id.*, p. 360. *See also* the Reply to the Notification of December 16, 2018, Regarding Charges Being Filed for the Violation of

On July 11, 2018, the student Velez Feliciano submitted an affidavit regarding the acts committed by Dr. **Arana Santiago**.[18]

On August 8, 2018, Dr. **Arana Santiago** took sick leave. Subsequently, on August 16, 2018, the SA and the Deans, submitted a report to the Acting Rector of the institution regarding the sexual harassment complaint against Dr. **Arana Santiago**.[19] In the aforementioned document, they concluded that Dr. **Arana Santiago** committed acts that constitute sexual harassment under the hostile environment clause prohibited under Title IX. They also recommended, based on the body of evidence collected, for an investigation on the matter to be initiated and for the Institutional Sexual Harassment Policy to be enforced.

Finally, on October 12, 2018, Dr. Jose L. Heredia Rodriguez, acting Rector of **UPRU**, signed the Indictment against Dr. **Arana Santiago**.[20] The charges brought against him alleged violations of

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Institutional Policies on Sexual Harassment, submitted by Dr. **Arana Santiago**, on p. 28.

[18] *See* Appendix, pp. 20-21.

[19] *Id.*, pp. 1-2. The following documents supporting the allegations were included with their report: 1) Title IX Case Referral, 2) the written complaint by the MATE 3012 course students, 3) the minutes for the meetings with the students, Ms. Genesis Velez Feliciano and the attendance log for both meetings, 4) the statement by Ms. Velez Feliciano, 5) the Title IX form, 6) an affidavit by the student Velez Feliciano, and 6) a copy of the attendance log for the meeting between Dr. **Arana Santiago** and Dean Velez Vera.

[20] *See* Appendix, pp. 24-33. The aforementioned letter was notified to Dr. **Arana Santiago**, on December 16, 2018.

Articles VIII(A)(1), (A)(2), (A)(3), (B)(1) and (B)(2) of the *Institutional Sexual Harassment Policy at* ***UPR***, Certification Number 130 (2014-2015) and §§ 35.2.8 and 35.2.19 of **UPR** General Regulations. It summarized the facts that gave rise to the charges, the evidence to be presented by **UPR**; which consisted of the student testimonies, Dr. **Arana Santiago**'s right to be legally represented during the process; the disciplinary sanctions that could be imposed on him if the charges alleged against him were proved; and the term of fifteen (15) days to answer the allegations. Likewise, Dr. **Arana Santiago** was informed that the case had been referred to the Examining Officer. Also, the letter indicated that the *formal* administrative process began when the charges were filed.

For his part, Dr. **Arana Santiago** submitted a reply to the *Notification of December 16, 2018, on the Filing of Charges for Violation of Institutional Policies on Sexual Harassment.* In his response allegation, he denied the alleged facts and requested to have the charges dismissed.[21] In addition, he argued that there were irregularities in the informal process established

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[21] *See* Appendix, pp. 34-42. Dr. **Arana Santiago** filed a complaint with the Federal Court for the District of Puerto Rico. See: 19-1762 (RAM) case in which he unsuccessfully sought the disqualification of the Judge who was hearing the case before the court because he had legally represented **UPR** in an earlier unrelated case; Subsequently, he requested an Injunction in order to stop the administrative investigation process against him. Finally, on June 3, 2021, in case 19-2128, Judge Silvia Carreno-Coll issued an *Opinion and Order* by which she declared the *Motion to Dismiss* that was filed by Mr. Tapia Maldonado, Mr. Heredia Rodriguez and others; and she dismissed the case before the Federal Court for the District of Puerto Rico because it was still being heard in the State Court.

in Article IX of Certification No. 130. Among these, that: 1) the SA did not inform him that he was under investigation; 2) he was not allowed to offer his version of the facts and present his affirmative and mitigating defenses; 3) an affidavit was not required of him; 4) he did not participate in the SA's investigation; and 5) he was not given the opportunity to examine the report that the SA sent to the Acting Rector of **UPRU**, among others.

After several procedural formalities, on October 30 and 31, 2019, and November 1, 2019, the evidentiary hearings were held before the Examining Officer. At these hearings, **UPRU** presented the testimony of three (3) of Dr. **Arana Santiago**'s students: David A. Ureña Negron, Esteban J. Tellado Zequeira, and Jann Romero Santiago. Dean Velez Vera, the SA, and the director of the Department of Natural Sciences, immediate supervisor of Dr. **Arana Santiago**, also testified. For his part, Dr. **Arana Santiago** did not provide testimonial evidence. The parties also submitted documentary evidence.

On November 26, 2019, the Examining Officer issued his *Report of the Examining Officer (Report)* which contained his factual findings, legal conclusions and recommendations to dismiss the charges alleged against Dr. **Arana Santiago**.[22] In particular, it resolved that the informal process established in Certification No. 130 was not carried out in an adequate and timely manner. In addition, he established that the students attributed their bad grades in the course to Dr. **Arana Santiago** for not fulfilling his role as a teacher and not to his behavior or expressions directed

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[22] *See* Appendix, pp. 69-111.

at the student Velez Feliciano. Likewise, he said that the file did not show that the student Velez Feliciano indicated that the attitudes of Dr. **Arana Santiago** unreasonably interfered with her studies. As such, he concluded that:

> Nor do we understand that the classroom conduct and expressions of the Respondent can reasonably be understood as creating a sufficiently hostile, intimidating, or offensive environment that would constitute sexual harassment. Although we understand that the behavior and expressions of the Respondent could be considered to be in bad taste and/or inappropriate for a classroom, we believe that these are not serious enough or have the sexual connotation to be perceived as sexual harassment by any other reasonable student. Appendix, pp. 109-110.

On December 20, 2019, Dr. Luis A. Tapia Maldonado, the Rector, issued his resolution in which he accepted the factual findings contained in the *report*.[23] He also issued additional determinations of proven facts, and concluded that Dr. **Arana Santiago** incurred violations of Articles VIII(A)(3) and (B)(2) of the Sexual Harassment Policy. He specified that the findings made by the Examining Officer were contrary to the Law and to **UPR**'s Sexual Harassment Policy and its institutional regulations. In his analysis, the Rector concluded that:

> Upon examination of the totality of the facts reported together with the subjective and

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[23] *Id.*, pp. 112-146.

> objective parameters established, we can conclude that the behavior of the Respondent was explicit and implicit, both verbal and physical, and created an intimidating, hostile, and offensive environment in the classroom, as perceived and reiterated by the students and by the student Genesis Velez Feliciano, and therefore constituted discriminatory behavior which amounted to sexual harassment. Appendix, pp. 143-144.

Thus, he decreed the immediate dismissal of Dr. **Arana Santiago** as professor of **UPR** and disqualified him from serving the institution.

Unsatisfied with this determination, Dr. **Arana Santiago** filed an Administrative Appeal with the Office of the President of **UPR**.[24] In his letter, he reiterated that **UPRU** failed to comply with the procedure instituted under Certification No. 130 and they did not give him any participation whatsoever in the informal stage of the investigation. He also stated that he did not have the opportunity to cross-examine the student Velez Feliciano, since she did not appear at any hearing.

On October 8, 2020, Dr. Jorge Haddock Acevedo, the President of **UPR**, issued a *Resolution* adopting the *Report and Recommendations of the Examining Officer* and declared that the appeal was dismissed.[25] Additional factual determinations were issued with regard to the *Report*. Among these, Dr. **Arana**

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[24] *See* Appendix, pp. 148-167.

[25] *Id.*, pp. 188-232.

Santiago received timely notification of the existence of an investigation against him.

Consequently, on October 31, 2020, Dr. **Arana Santiago** appealed to the Governing Board of the University of Puerto Rico (Governing Board).[26] On April 29, 2021, the Governing Board decided to dismiss the appeal and confirmed the decision of Dr. Haddock Acevedo, president of **UPR**.[27] Likewise, he indicated that his determination is based on the report of the Examining Officer issued on March 16, 2021. In the aforementioned letter, he decreed that the fact that the student Velez Feliciano did not testify at the hearing did not prevent **UPRU** from proving her case in its entirety. He stated that:

> [. . .]UPRU could not tolerate the Appellant's conduct, much less risk that it may worsen or be repeated, especially when, in the past, the appellant had had an earlier incident of sexual harassment which resulted in his suspension from employment and pay with the institution for six (6) months. Appendix, p. 401.

He also concluded that Dr. **Arana Santiago** engaged in immoral, offensive and humiliating conduct against the student Velez Feliciano and in violation of the constitutional principles of the right to study, as well as the public policy of the Law against Sexual Harassment in Educational Institutions, the University Act, [and] the relevant university regulations and pro-

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[26] *Id.*, pp. 233-336.

[27] On May 13, 2021, the **Governing Board**'s decision was notified. *See*, Appendix, pp. 337-406.

cedures. He ruled that the dismissal of Dr. **Arana Santiago** from his position in the institution was justified, as well as his definitive separation from any link with the university.

On June 1, 2021, Dr. **Arana Santiago** presented a *Reconsideration.*[28] However, the **Governing Board** did not address it.

Still unsatisfied, on July 14, 2021, Dr. **Arana Santiago** appealed for an administrative review before this Court of Appeals. Therein, he points out the following error(s):

> Dr. Luis Tapia Maldonado erred by categorizing the conduct alleged in the administrative complaint as sexual behavior. Consequently, **UPRU** erred when they initiated a sexual harassment investigation against the petitioner.
>
> Dr. Luis Tapia Maldonado erred when he concluded that the subjective aspect of the investigation had been fulfilled, as established by the Honorable Supreme Court in the normative case **UPR**-*Aguadilla v. Jose Lorenzo Hernandez*, 2012 TSPR 57.
>
> Dr. Luis Tapia Maldonado erred, having indicated that due process of law had been fulfilled.
>
> The rector erred when he indicated that the protocol established in Certification 130 had been fulfilled.

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[28] *See* Appendix, pp. 407-429.

Dr. Luis Tapia Maldonado erred in his appraisal of the testimonial evidence. The examining officer partially erred in his appraisal of the testimonial evidence.

Dr. Luis Tapia Maldonado erred when he did not realize the mendacity of Vivian Velez Vera and Marisol Diaz Ocasio.

Dr. Luis Tapia Maldonado erred when he found the petitioner guilty of violating the institutional policies against sexual harassment at the University of Puerto Rico and for committing immoral acts and, consequently, for dismissing him.

The rector erred with regard to the applicable law.

Dr. Luis Tapia Maldonado erred by continuing to process an administrative complaint that was evidently false.

Dr. Luis Tapia Maldonado erred when he did not consider the illicit change in the students' grades for the Mate 3012, m23 course in his Resolution.

Dr. Luis Tapia Maldonado erred when he dismissed the petitioner without having the required quantum of evidence.

UPRU erred by objecting to the testimony of Vivian Velez Vera and Marisol Diaz Ocasio regarding the illicit change in the students' grades for the Mate 3012, m23 course. The examining officer erred when he admitted said objection.

> Dr. Luis Tapia Maldonado erred when he dismissed the petitioner when the administrative process had incurred in the errors covered in #1 through #12 as previously expressed and discussed.
>
> On April 18, 2022, **UPRU** filed its Opposing Plea.

Having thoroughly evaluated the case file, counting on the benefit of the appearance of both parties, and having carefully studied the transcript of the stipulated oral evidence, we are in a position to resolve. We present the rules of law that are relevant to the raised dispute(s).

II.

Because the points stated in error concern the same applicable law, we shall proceed to summarize them into two (2) key issues and discuss them together. Which are: (1) whether Dr. **Arana Santiago**'s right to due process of law was violated during the administrative proceedings against him; and (2) whether the decision to remove him from his position as professor at **UPRU**, taken by Dr. Tapia Maldonado, was correct under the law.

A.

The *Uniform Administrative Procedure Act* (LPAU, Spanish acronym) *of the Government of Puerto Rico* provides a body of minimum standards that govern the adjudication and regulatory processes for public

administration.[29] Section 4.1 institutes a *judicial review* by this Court of Appeals for the agencies' final determinations.[30]

The purpose of a *judicial review* is to limit the discretion that agencies have and ensure that they perform their functions in accordance with the law.[31] The guiding criterion when passing judgment on an administrative forum's decision is how reasonable were the agency's actions.[32] Our assessment of an agency's decision is limited, then, to determining whether an agency acted arbitrarily, illegally or unreasonably, or whether its actions constitute an abuse of discretion.[33]

However, the decisions made by specialized administrative bodies enjoy a presumption of legality and correctness, so their conclusions and interpretations deserve great consideration and respect.[34] Therefore, in carrying out our review function, this Court must consider the agency's specialization and experience, distinguishing between questions with a statutory

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[29] Known as Law No. 38 of June 30, 2017, as amended, 3 LPRA §§ 9601-9713. *Saldanya Egozcue v. Junta*, 201 DPR 615, 621 (2018).

[30] 3 LPRA § 9671.

[31] *Torres Acosta v. Review Board*, 161 DPR 696, 707 (2004).

[32] *Otero v. Toyota*, 163 DPR 716, 727 (2005). D. Fernandez Quiñones, *Administrative Law and Uniform Administrative Procedures Act*, 2nd ed., Bogota, Ed. Forum, 2001, p. 543.

[33] *Torres Acosta v. Review Board, supra*, p. 708.

[34] *Garcia Reyes v. Cruz Auto Corp.*, 173 DPR 870, 891 (2008); *Murphy Bernabe v. Superior Court*, 103 DPR 692, 699 (1975).

interpretation—on which the courts are specialists—and issues regarding discretion or administrative expertise.[35]

The scope of the *judicial review* for an administrative determination is limited to the following: (1) whether the remedy granted by the agency was appropriate; (2) whether the agency's factual determinations are based on *substantial evidence* as established in the administrative record, and (3) whether the legal conclusions were correct.[36]

Factual determinations shall be upheld by the courts if they are supported by *substantial evidence* arising from the administrative record being considered as a whole.[37] *Substantial evidence* is that which is relevant and which a reasonable mind can accept as adequate to support a conclusion.[38] Due to the presumption of regularity and correctness that covers the decisions that are issued by administrative agencies, anyone who alleges the absence of *substantial evidence* must provide sufficient evidence to defeat said presumption.[39] To do so "you must prove that the record contains other evidence that reduces or undermines the evidentiary value of the contested evidence, to the

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[35] *Adorno Quiles v. Hernandez*, 126 DPR 191, 195 (1990).

[36] Section 4.5 of the LPAU, 3 LPRA § 9675; *Torres Rivera v. PR Police*, 196 DPR 606, 627 (2016).

[37] *San Jorge Hospital Neighbors' Association v. United Medical Corp.*, 150 DPR 70, 75 (2000).

[38] *Otero v. Toyota, supra*, p. 728.

[39] *Pacheco Torres v. Estancias de Yauco*, SE, 160 DPR 409, 431 (2003).

extent that it cannot be concluded that the agency's determination was reasonable in accordance with the totality of the evidence before it."[40] This is known as the rule of *substantial evidence*, which seeks to avoid replacing the criterion of the specialized administrative body with the criterion of the reviewing court.[41] Therefore, even if there is more than one reasonable interpretation of the facts, the court must defer to the agency, and not substitute the agency's judgment with its own.[42]

On the other hand, all aspects of an agency's legal conclusions are subject to review, notwithstanding any rule or criterion.[43] Even so, we must defer to how administrative bodies interpret the laws and regulations they administer.[44] In light of this, "[even] in questionable cases where the agency's interpretation is not the only reasonable one, the agency's determination deserves substantial deference."[45]

As a whole, if the contested decision is reasonable and supported by *substantial evidence* in the administrative file, its confirmation is appropriate. However, review courts may intervene in the contested decision

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[40] *Gutierrez Vazquez v. Victor Hernandez*, 172 DPR 232, 244 (2007).

[41] *Pacheco Torres v. Estancias de Yauco*, SE, supra, p. 432.

[42] *Id.*

[43] *Rebollo v. Yiyi Motos*, 161 DPR 69, 77 (2004).

[44] *Torres Santiago v. Department of Justice*, 181 DPR 969, 1002 (2011).

[45] *Id.*

when it is not based on *substantial evidence*, or when the action taken is arbitrary, unreasonable or illegal, or when it affects fundamental rights.[46]

Regarding the applicability of the Rules of Evidence in the adjudication processes for administrative agencies, the LPAU and its interpretative jurisprudence have established that such standards are not included, as a general rule, as the intent is for fairness to prevail without the procedural obstacles of the courts of justice (quotations omitted).[47] Our administrative legal system allows these processes to be agile and simple with the purpose of achieving a quick, fair and economic solution.[48]

B.

The Bill of Rights of our Constitution states that,"[n]o person shall be deprived of their liberty or property without due process of law, nor shall anyone in Puerto Rico be denied equal protection under the law."[49] Likewise, the Constitution of the United States provides that, "[n]o person [. . .] shall be deprived of

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[46] *Planning Board v. Cordero Badillo*, 177 DPR 177, 187 (2009).

[47] *Otero v. Toyota, supra*, p. 733, citing *Martinez v. Superior Court*, 83 DPR 717, 720 (1961). *See* also 3 LPRA § 2163.

[48] *Id.* In *Otero v. Toyota*, the administrative agency admitted into evidence a report that found the defects in a motor vehicle, which was referenced as evidence. The Supreme Court of Puerto Rico ruled that the rules of evidence do not apply to administrative proceedings and the administrative forum could admit it. In addition, it concluded that the aforementioned report corroborated the defects that the agency's technician found in the car concerned.

[49] Art. II, § 7, ELA Const.

their life, liberty or property, without due process of law."[50] Furthermore, Amendment 14 establishes that [n]o state shall deprive any person of their life, liberty or property without due process of law, nor shall anyone, within its jurisdiction, be denied equal protection under the law."[51] The aforementioned constitutional clauses were enacted with the purpose of preventing the government from abusing its powers and from using them as instruments to oppress the citizenry.[52] The postulate of due process of law has been defined as the "right of every person to have a fair process and with all of the guarantees offered by law, in judicial as well as in administrative forums".[53] This constitutionally enshrined right operates on two (2) aspects: procedural and substantive.[54] In the substantive aspect, this doctrine seeks to protect and safeguard the fundamental rights of individuals.[55] On the other hand, the procedural aspect, "imposes upon the State the obligation to ensure that interference with the individual's interests in freedom and property is done through a fair and equitable procedure."[56] The procedural aspect recognizes several guarantees that constitute due process of law. Among them: (1)

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[50] Amd. V, US Const.

[51] Amd. XIV, US Const.

[52] *Rodriguez Rodriguez v. ELA*, 130 DPR 562, 575 (1992).

[53] *Ports Auth. v. HEO*, 186 DPR 417, 428 (2012).

[54] *Ind. Emp. A.E. P. v. A.E.P.*, 146 DPR 611, 616 (1998).

[55] *Id.*

[56] *Id.*

allowing a preliminary hearing; (2) an adequate and timely notification; (3) the right to be heard; (4) the right to confront the opposing witnesses; (5) the right to provide oral and written evidence in their favor; and (6) the presence of an impartial adjudicator.[57] Because administrative bodies resolve disputes that could intervene in an individual's interests in property or freedom, our legal system has extended the aforementioned guarantees to administrative procedures. However, in administrative forums, due process of law is more laxed than in court proceedings.[58] What we have been emphatic about is that, "the award procedure must be fair and equitable."[59] Section 3.1 of LPAU provides that, when adjudicating a dispute, agencies must safeguard the following rights for the parties: (1) timely notice of charges or complaints or claims against a party; (2) provide evidence; (3) an impartial judgment, and (4) a decision based on the record.[60] The foregoing is a corollary of the aforementioned right to due process of law guaranteed in our Constitution.

C.

The Supreme Court of Puerto Rico has reiterated that career public employees hold a proprietary interest in their jobs, and therefore, they are creditors of due

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[57] *Vendrell Lopez v. AEE*, 199 DPR 352, 359 (2017).

[58] *Baez Diaz v. ELA*, 179 DPR 605, 623 (2010).

[59] *Id.*

[60] 3 LPRA § 9641.

process of law.[61] That said, in public employment, the aforementioned guaranty to due process of law must be applied before both the salary or the employee's permanence in their position can be affected.[62] These guarantees are made clear through the notification of disciplinary charges, by holding a formal administrative hearing by which the employee is given the opportunity to be heard, to examine the evidence against them and to present evidence in their favor, and at in said hearing, the determination is made based on the content of the employee's file and is issued by an impartial judge.[63] Now then, "the constant jurisprudence of the U.S. Supreme Court and that of Puerto Rico is clear in the sense that the exercise of property rights is not absolute. It is subject to social interests that are grouped into the concept of '*overriding state power*' or '*police power*'."[64]

D.

The *Law to Prohibit Sexual Harassment in Educational Institutions* provides for all matters regarding the sexual harassment of students in edu-

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[61] *Torres Solano v. PRTC*, 127 DPR 499 (1990).

[62] *Id.*

[63] *Lupiañez v. Sec. of Education*, 105 DPR 696 (1977).

[64] Our highest forum has defined the national interests as, "[s]uch powers as are *inherent in the state that is used by the Legislature* to prohibit or regulate certain activities for the purpose of promoting or protecting public peace, morals, health and *the general welfare of the community*, which can be delegated to the municipalities." *Dominguez Castro v. ELA*, 178 DPR 1, 36 (2010).

cational institutions, including at university levels.[65] This legislation aims to prohibit the sexual harassment of students in order to safeguard an environment conducive to their personal development and learning.[66] The aforementioned statute defined what constitutes sexual harassment in these institutions and recognized that it was the public policy of the State to ensure that students—children, youths and adults—have the right to pursue their studies free from the pressure of sexual harassment.[67] In light of this, the student was provided with a variety of remedies, among which are, to be compensated for damages; to be reinstated in their studies; to file a complaint with the institution; to file a civil complaint with the Court of First Instance (CFI); and to request an injunction to do or to desist.[68]

Likewise, this legislation imposed different obligations upon educational institutions, with the purpose of preventing, discouraging and avoiding this type of conduct, as well as the civil liability for acts that constitute sexual harassment.[69] Regarding the actions of their teaching and non-teaching staff, which constitute said harassment, it was established that they shall be liable, "regardless of whether the specific acts that are subject to controversy were or were not

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[65] Known as Law No. 3-1998. 3 LPRA §§ 149a and s.s.

[66] *UPR Aguadilla v. Lorenzo Hernandez*, 184 DPR 1001, 1021 (2012).

[67] 3 LPRA §§ 149a and 149b(a).

[68] 3 LPRA § 149j.

[69] 3 LPRA §§ 149e-149i.

prohibited by the educational institution, and regardless of whether the institution and its teaching and non-teaching staff knew or should have known that said conduct was prohibited."[70] In its Statement of Grounds, the *Act to Prohibit Sexual Harassment in Educational Institutions, supra,* warns that the conduct of harassment is varied, including, but not limited to: verbal harassment; lewd looks; inappropriate comments; touching; pressure and invitations with sexual content; implicit demands for sexual favors, and physical attacks.[71]

For its part, our Supreme Court has stated that sexual harassment can be expressed in such subtle manifestations as: unwelcome compliments, winks and sexual insinuations.[72] This conduct, among others, was recognized as a form of sexual harassment by hostile environment. This practice is prohibited under Law No. 3-1998, *supra.* This occurs when a person's sexual conduct is intended to intimidate, threaten the student or unreasonably interfere with their academic performance or when the sexual conduct makes the academic environment intimidating, offensive or hostile. As resolved in ***UPR** Aguadilla v. Lorenzo Hernandez, supra,* and Law No. 3-1998, *supra,* "the totality of the circumstances in which the events occurred shall be considered to determine whether the alleged conduct or unwanted advances constitute

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[70] 3 LPRA § 149e. *UPR Aguadilla v. Lorenzo Hernandez, supra,* pp. 1017-1018.

[71] Statement of Grounds *for Law 3-1998, supra.*

[72] *Sanchez v. A.E.E.*, 142 DPR 880, 884 (1997).

sexual harassment."[73] In summary, while analyzing the conduct in dispute, it is necessary to examine the totality of the circumstances in each case, to determine whether the conduct can reasonably be construed as threatening, intimidating and unreasonably interfering with their studies or creates a sufficiently hostile, intimidating or offensive environment for the student.[74]

Likewise, **UPR** has its own Sexual Harassment Policy. It institutes a special process through which sexual harassment complaints are addressed in cases where the complaint leads to an investigation resulting in just cause to impose disciplinary sanctions on the accused.[75] This policy provides that the process begins with a complaint, which, if filed by a student, must be referred to the Office of the Student Attorney or the Dean of Students. The party against whom the complaint is brought shall be informed of the allegations against them; may state their position and defenses; but it will not be necessary to offer them all of the

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[73] 3 LPRA § 149d.

[74] *UPR Aguadilla v. Lorenzo Hernandez, supra*, 1024-1025.

[75] *See* Article IX (C), *Institutional Sexual Harassment Policy at the University of Puerto Rico*, Certification No. 130 (2014-2015) by the Governing Board of the University of Puerto Rico. Furthermore, the aforementioned Policy allows the institution to continue with the process of investigation, even if the complainant does not participate in it or decides to withdraw the complaint. Article IX(J). It also empowers the university to take any interim measures that are possible and desirable within this informal process to protect the claimant more promptly. Article IX(G).

guarantees offered by the due process of law that is recognized in formal proceedings.[76]

Finally, if charges are filed against the respondent, a formal process shall be initiated. This formal process provides for the respondent to be notified of the charges against them; who may answer the complaint; and the hearing is held before an Examining Officer that allows the respondent to confront the evidence against them and present evidence in their favor.[77] It also provides that, upon completion of the hearing, the designated Examining Officer shall submit a written report to the appointing authority of the respondent's institution which shall contain: "(1) A list of the proven facts; (2) A list of their legal findings, and (3) A recommendation for the resolution of the case."[78] Once the report of the Examining Officer is submitted, the appointing authority shall analyze the case and the report and impose such disciplinary sanctions as are deemed appropriate. The decision shall, for its part, be notified to the respondent together with his right to appeal.[79]

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[76] *Id.*, Article IX(I) provides: The person against whom a complaint is filed will be given the opportunity to be informed of the allegations against them, to state their position and defenses. Provided, however, that at this stage of the proceedings there shall be no right to the guarantees recognized in formal proceedings as due process of law. However, they may be accompanied by a lawyer when they attend the meeting.

[77] *Id.*, Article XI (A).

[78] *Id.*, Article XIV.

[79] *Id.*, Article XV.

Specifically, Article XV of Certification No. 130 (2014- 2015) on the Appointing Authority states:

> The appointing authority of the respondent's institutional unit **shall decide the case after evaluating the report of the Examining Officer and shall impose disciplinary sanctions, if any, as appropriate**; pursuant to the General Regulations of the University of Puerto Rico or the General Regulations for Students. They shall notify the respondent in writing and by registered mail with return receipt and shall advise them of their right to appeal the decision before the forum and within the terms specified in the university's regulations for appeal proceedings. The appointing authority shall inform the alleged victim of the final result in writing, by registered mail with return receipt.[80] (Emphasis ours.)

Likewise, our Highest Forum has clarified that the appointing authority retains its power to make decisions, even if it has appointed an Examining Officer to address the complaint and receive evidence.[81] While exercising it, they do not have to accept the entire report by said adjudicator if they do not consider it to be correct.[82] What is [e]ssential to due process [is that the appointing authority makes] an informed decision based on its knowledge and understanding of the evidence presented, regardless of the

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[80] *Id.*

[81] *UPR Aguadilla v. Lorenzo Hernandez, supra*, p. 1011.

[82] *Id.*

means or mechanism by which that intelligence of the matter being debated was obtained (quotes omitted).[83]

Regarding the sanctions, **UPR**'s General Regulations (GR) allows for the penalization, with disciplinary actions, of acts that, under the canons of moral responsibility that prevail in the community, constitute immoral conduct, as well as violations of University Law, the provisions of the aforementioned document, and other university regulations.[84] Dismissal is one of the corrective sanctions for non-compliance with these rules.[85] However, the GR provides for progressive disciplinary penalties, which may include a verbal warning, a written warning, suspension from employment and salary, for a defined term not to exceed six (6) months and, finally, dismissal.[86]

III.

The controversy before us requires us to decide, in first place, whether Dr. **Arana Santiago**'s right to due process of law was violated during the process of investigation, which began with the sexual harassment complaint filed against him by one of his students, and in consequence, the University dismissed him from his position as a **UPRU** professor. Regarding

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[83] *Id.*, citing *ADCVP v. Superior Court*, 101 DPR 875, 883 (1974).

[84] General Regulations of the University of Puerto Rico, Certification No. 160 (2014-2015) Article 35, § 35.2.8 and 35.2.19.

[85] *Id.*, § 35.3.4.

[86] *Id.*, § 35.3.

this point of error, we disagree with Dr. **Arana Santiago**'s position. From the case file before us, it appears that during the (*informal*) process of investigation and *formal* proceedings, his right to due process of law was not infringed. Consider.

It arises from the file before us, that during the informal process of investigation, Dr. **Arana Santiago** was given the opportunity to be involved in the process; he was notified of the allegations filed by his students; of the allegations and the complaint filed by the student Genesis Velez Feliciano, and was also allowed to express and defend himself, both verbally and in writing.[87] However, it should be noted that during this stage of the proceedings "there shall be no right to the guarantees recognized in formal proceedings as due process of law."[88]

Likewise, with the advent of the formal process of adjudication, Dr. **Arana Santiago** was duly and appropriately notified of the charges against him; he appeared, being represented by counsel; he participated

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[87] According to the documents on file and the transcript of oral evidence (TPO). The Deans met with Dr. **Arana Santiago** to inform him that they received complaints from the students regarding his actions toward the student Genesis Velez Feliciano and the environment that existed in the classroom. See, Appendix, pp. 526-528; transcript of oral evidence (TPO) of October 31, 2021, testimony of Dean Velez Vera, pp. 45-46. Professor Torres Bauza, director of the Department of Natural Sciences, also met with Dr. **Arana Santiago**, gave him the statement provided by the student Velez Feliciano and advised him of his right to submit his defense regarding the filed complaint. transcript of oral evidence (TPO) of November 1, 2019, testimony of Professor Torres Bauza, pp. 15-17.

[88] Article IX (I) of Certification No. 130.

in the administrative hearing; he was able to cross-examine **UPRU** witnesses; he submitted evidence in his favor; and the decision to remove him from his post was based on the file. Therefore, we must conclude that Dr. **Arana Santiago** was not deprived of his right to due process of law.[89]

As for the other allegations of error attributed to the administrative forum by Dr. **Arana Santiago**, in which he claims that the decision to dismiss taken by the Rector of **UPRU** was contrary to Law, we conclude that we cannot support his position either. Consider.

As we have specified, in the processes of adjudication by administrative agencies, the Rules of Evidence do not apply, as a general rule. We understand that, the Examining Officer in charge of this *formal* process, erred to admit, in a limited way, the affidavit of the student Genesis Velez Feliciano, since this was out-of-court evidence under the aforementioned rules.[90] However, after a thorough examination of the transcript of oral evidence (TPO), we are of the opinion that the testimonies given by the three (3) students support the allegations contained in said document. Therefore, it is reasonably understood that the student Velez Feliciano was the victim of unwelcome and insinuating verbal and physical advances, in the

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[89] This was the same conclusion that was reached by the Federal Court for the District of Puerto Rico in civil case number 19-1762 (RAM), filed on June 3, 2021, by Dr. **Arana Santiago** against the University of Puerto Rico in Utuado and Dr. Luis Tapia Maldonado.

[90] It should be noted that the student Genesis Velez Feliciano was virtually available to give her testimony, but the Examining Officer did not authorize her intervention in this way.

classroom and throughout the course, by Dr. **Arana Santiago**. Also, that, at all times, said conduct was rejected by the student Velez Feliciano, to the extreme of having to leave the course. We reiterate that this is a reasonable inference from the basic facts that arise from the totality of the evidence presented before the administrative forum, so the decision of the **Governing Board** merits deference from this court.[91]

In addition, pursuant to the provisions of the *UPR Sexual Harassment Policy*, the state institution has a duty to protect its students from any conduct constituting sexual harassment or conduct that may harm their dignity. This, in compliance with their overriding state power, which seek to promote a safe environment where the students' learning and personal development can thrive.

Likewise, we are not convinced by Dr. **Arana Santiago**'s argument that the Rector of **UPRU** did not base his decision on the file. Specifically, he argues that he issued additional facts that were not alleged in the administrative complaint and therefore did not have the opportunity to properly prepare to refute them.

It should be clarified that **UPR**'s administrative procedure culminated with the decision taken by the institution, after a formal process of adjudication, in which several people with different functions participated. For example, the appointing authority designates an Examining Officer to address and receive the evidence, but the Examining Officer pro-

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91 *Otero v. Toyota, supra.*

vides a report with his recommendations, which is reviewed by the appointing authority who does not have to accept it in its entirety if it does not consider it to be correct. In fact, the institution is the one who must finally adjudicate the dispute according to the administrative record.[92]

In this case, the Rector, as the appointing authority, thoroughly analyzed the recommendations made by the Examining Officer. However, he dismissed the legal conclusions of the aforementioned report, considering them "contrary to the rule of law that exists in the Commonwealth of Puerto Rico and to the Public Policy of Zero Tolerance against Acts of Sexual Harassment at the University of Puerto Rico and university regulations."[93] We resolve that this action agrees with their institutional faculties. Likewise, **UPR**'s General Regulations authorize the Rector to impose the dismissal of Dr. **Arana Santiago**, as a progressive sanction. More so when he had been found liable for a similar conduct in 2012. On that occasion Dr. **Arana Santiago** was suspended for a term of six (6) months.[94]

Consequently, we understand that the decision taken by the Rector was justified. It was reasonable and is supported by the evidence on record. The aforementioned opinion was grounded on **UPR**'s duty

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92 *UPR Aguadilla v. Lorenzo Hernandez, supra*, p. 1012.

93 *See* Appendix, p. 113.

94 This fact was raised by Dr. **Arana Santiago** himself in his *Response to the Notification of December 16, 2018, on the Filling of Charges for Violation of Institutional Policies on Sexual Harassment*. Appendix, p. 38.

to maintain an educational environment free of any violent conduct toward its students. Therefore, Dr. **Arana Santiago** could not defeat the presumption of correctness or corroborate that the decision by which he was removed was unreasonable and/or not supported by the evidence presented, nor was it capricious, illegal or arbitrary, or constitute an abuse of discretion by the Rector. We therefore resolve that these are mere allegations that do not constitute evidence.[95] In light of this, we give due deference to the administrative body and we will refrain from intervening with the *Decision* under appeal.

IV.

For the aforementioned reasons, *we confirm the Decision* issued on April 29, 2021, by the **Governing Board of the University of Puerto Rico.**

As agreed by the Court and certified by the Clerk of the Court of Appeals.

Ms. Lilia M. Oquendo Solis, Esq.
Clerk of the Court of Appeals

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95 *UPR Aguadilla v. Lorenzo Hernandez, supra,* p. 1013.

CERTIFICATE OF ACCURACY
(APRIL 4, 2024)

1. I certify this translation to be a word-for-word English translation of the original Spanish document. It was made by a competent translator, and to the best of my knowledge and ability, this translation is an accurate, true, authentic, and complete translation of the original language text.

2. On March 4th, 2024; the following document was translated:

A. SENTENCE; issued to DR. LUIS S. ARANA SANTIAGO; issued by the GENERAL COURT OF JUSTICE; COURT OF APPEALS; SPECIAL PANEL; COMMONWEALTH OF PUERTO RICO in SAN JUAN; and dated JUNE 8, 2023.

/s/ Amneris Quiñones

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04/04/24
Date

APPENDIX B
ADMINISTRATIVE RESOLUTION, UNIVERSITY OF PUERTO RICO (DECEMBER 20, 2019)

**ADMINISTRATIVE RESOLUTION,
UNIVERSITY OF PUERTO RICO
(DECEMBER 20, 2019)**

UNIVERSITY OF PUERTO RICO IN UTUADO
UTUADO, PUERTO RICO

UNIVERSITY OF PUERTO RICO IN UTUADO,

Complainant,

v.

DR. LUIS S. ARANA SANTIAGO,

Respondent.

About: Disciplinary Action

RESOLUTION

Having evaluated the report provided by the Examining Officer, Atty. Luis Sevillano Sánchez, related to the charges formulated against Dr. Luis S. Arana Santiago, it is determined to accept the determinations of facts contained in said Report, except for the determination contained in paragraph number thirty-one (31) of said Report.

The conclusions of law are not accepted to the effect that none of the modalities of sexual harassment were proven and that the informal procedure established in Certification No. 130 (2014-2015) of the Governing Board on the Institutional Policy against

Sexual Harassment at the University of Puerto Rico was not complied with. Therefore, we **DO NOT** accept his recommendation to dismiss all charges against the respondent.

After evaluating the administrative record in its entirety, both the documentary evidence and having carefully listened to the recordings of the administrative hearings, we proceed to carry out the following analysis: The recommendation for dismissal is not based on a questioning of the events that were the subject of the complaint filed by the student. Given that the Examining Officer established as proven facts what the students declared, we have the responsibility to be very careful before accepting or rejecting the recommendation to dismiss the charges against Dr. Luis S. Arana Santiago. There is a duty to protect the rights of students, and that of the University itself, whose primary responsibility is to guarantee an environment free of sexual harassment and conduct that under the prevailing moral canons of our institution constitutes immoral conduct.

The conclusions of law formulated by the Examining Officer are contrary to the existing rule of law in the Commonwealth of Puerto Rico and the Public Policy of zero tolerance against acts of Sexual Harassment at the University of Puerto Rico and the university regulations.

If we endorse the theory of the Examining Officer, in the sense that the conduct and expressions shown by Dr. Luis S. Arana Santiago, "could be considered of bad taste and/or not appropriate for a classroom," but are not serious enough or have a sexual connotation to be perceived as sexual harassment, we would be allowing unacceptable behavior that lacerates the

dignity of the student, violates the moral postulates of our institution, and in no way provides a favorable environment for the development of the educational process in our institution.

Accepting his recommendation would imply allowing the students of the University of Puerto Rico to be exposed to repeated, immoral and improper conduct and would imply ignoring and distance ourselves from the moral principles that govern the mission of our Institution.

It corresponds to the University to comply with its mission of guaranteeing a study environment conducive to the academic training of its student population and to ensure that its professors comply with the institutional policies that promote said mission.

Based on the documentary and testimonial evidence presented in this case, the following are formulated:

Determinations of Facts

Facts Stipulated by the parties

1. That the University of Puerto Rico in Utuado is an educational institution.

2. That the Respondent Dr. Luis S. Arana Santiago is a Professor at the University of Puerto Rico, Utuado Campus.

3. That at the time of the events the Respondent was a professor of Mathematics at the UPR, Utuado Campus and offered the course MATE 3012 M-25.

4. That the student Génesis Vélez Feliciano took the MATE 3012 course with the Respondent during the 2017-2018 academic year.

5. That Professor Vivian Vélez Vera, Dr. María C. Rodríguez and Ms. Marisol Díaz Ocasio were the people who submitted the Complaint Report for Sexual Harassment Case Title IX dated August 16, 2018.

6. That on May 24, 2018 several students from the MATE 3012-M25 course went to the Dean of Academic Affairs and presented complaints against Prof. Luis S. Arana Santiago.

7. That on May 24, 2018, the student Génesis Vélez Feliciano presented complaints for improper conduct by Prof. Luis S. Arana.

8. That on May 24, 2018 in the afternoon, Prof. Vivian Vélez Vera, Interim Dean of Academic Affairs, met with Dr. Luis Arana.

9. That on June 3, 2018, the student Génesis Vélez Feliciano made a declaration about the actions of Prof. Luis S. Arana Santiago where she established that she was interested in filing a formal complaint.

10. That on June 5, 2018, the student Génesis Vélez Feliciano submitted a document titled "Title IX Complaint Form."

11. That on July 11, 2018, the student Génesis Vélez Feliciano subscribed an Affidavit before the Notary Public Felipe Algarín Echandi where she established acts committed by Prof. Luis Arana Santiago.

Proven Facts, According to the Evidence Presented and Admitted During the Administrative Hearings, Arising from the Report Issued By the Examining Officer:

1 That the teaching period of the Second Semester of the 2017-2018 Academic Year of the University of Puerto Rico in Utuado (hereinafter called ("UPRU")), was delayed due to Hurricane María and began in the month of February 2018. (Exhibit 2 of the Respondent)

2. That the witnesses David Ureña Negrón, Esteban J. Tellado Zequeira and Jann Romero Santiago were taking the MATE 3012 M-25 course along with the student Génesis Vélez Feliciano, which was offered by the respondent during the Second Semester of the 2017-2018 Academic Year.

3. That the witnesses David Ureña Negrón, Esteban J. Tellado Zequeira and Jann Romero Santiago perceived that on occasions during the course, the Respondent stuck to the desk of the student Génesis Vélez Feliciano and put his hands in his pants pockets.

4. That the witnesses David Ureña Negrón and Esteban J. Tellado Zequeira added that when the Respondent put his hands in his pockets, he also pulled up his pants.

5. That the witnesses David Ureña Negrón and Esteban J. Tellado Zequeira perceived how at times during the course, the Respondent made comments that the student Génesis Vélez Feliciano had "voltage" but not the other students.

6. That the witnesses David Ureña Negrón and Esteban J. Tellado Zequeira perceived how on occasions during the course, the Respondent made comments to the student Génesis Vélez Feliciano where he told her that she liked men with money and strong men, in addition to asking her if her boyfriend could do the exercises on his mind.

7. That the witnesses David Ureña Negrón and Esteban J. Tellado Zequeira perceived that the conduct described above occurred often, starting from March 2018 until the end of the course.

8. That by May 23, 2018, all students enrolled in the MATE 3012 M-25 course were failing said course.

9. That on May 23, 2018, the student David Ureña Negrón, together with another student, went to the Deanery of Students Affairs to file academic complaints against the Respondent.

10. That on May 23, 2018, Ms. Marisol Díaz Ocasio, Student Attorney, briefly attended to the students, since they came after 5:00 in the afternoon and she instructed them to write a letter and address it to the Dean of Academic Affairs.

11. That the last day for partial withdrawals was May 24, 2018. (Exhibit 2 of the Respondent)

12. That on May 24, 2018, the students of the MATE 3012 M-25 course, that the Respondent was offering, subscribed a letter (Exhibit 1 from the Respondent) in which they stated that they were failing the course and that this was because the professor was not fulfilling his teaching role.

13. That in the letter of May 24, 2018, the students added that they felt uncomfortable due to

comments and gestures that the Respondent made towards the student Génesis Vélez Feliciano.

14. That the students' letter of May 24, 2018 does not specify what gestures or comments the Respondent made.

15. That the letter from the students of May 24, 2019, was delivered to the Deanery of Academic Affairs, that same day.

16. That on May 24, 2019 at 3:00 PM a meeting was held in the UPRU Academic Senate Room where the students of the MATE 3012 course attended and where Prof. Vivian Vélez Vera was present, Interim Dean of Academic Affairs and Prof. María C. Rodríguez Sierra, Interim Dean of Student Affairs, in which it the complaints presented by students in the course offered by the Respondent were heard.

17. That what was stated by the students at the meeting on May 24, 2019 at 3:00 PM was recorded in a Minute. (Complainant's Exhibit 1)

18. That the witnesses David Ureña Negrón, Esteban J. Tellado Zequeira and Jann Romero Santiago, recognized their signatures on the aforementioned Minutes.

19. That the Minutes of May 24, 2019 refer to fifteen (15) complaints from the students towards the Respondent, however only two (2) of them could be related to the charges brought against him in the present case.

20. That the Minutes states that the students complained that the Respondent told them that: "they have no voltage for the class, except for [student] Génesis Vélez" and that "he maintains comments that

are out of place and with strong connotations towards [the student] Génesis Vélez".

21. That from the Minutes of May 24, 2019 at 3:40 PM (Exhibit 2 of the Complainant, Annex 4), follows that Prof. Vivian Vélez Vera, Interim Dean of Academic Affairs and Prof. María C. Rodríguez Sierra, Interim Dean of Student Affairs, met with student Génesis Vélez Feliciano.

22. That from the Minutes of the meeting with the student Génesis Vélez Feliciano, it does not appear that she perceived that the Respondent, on occasions during the course, stuck to her desk or that he put his hands in his pockets and raised his pants.

23. That from the Minutes of the meeting with the student Génesis Vélez Feliciano, it appears that she stated that on one (1) occasion the Respondent approached her almost close to her face.

24. That it follows from the Attendance Record of the meeting of May 24, 2019 at 5:15 PM in the Dean of Academic Affairs (Exhibit 3 of the Respondent) and the draft of the Minutes of said meeting (Exhibit 4 of the Respondent), that Prof. Vivian Vélez Vera, Interim Dean of Academic Affairs, met with the Respondent regarding the situation of the MATE 3012 M-25 course.

25. That from the draft of the Minutes of the meeting of May 24, 2019 at 5:15 in the Deanery of Academic Affairs' office (Exhibit 4 of the Respondent) it appears that of the fifteen [15] matters discussed, only item 11 refers to an issue that could be related to the charges brought against the Respondent, which indicates the following: "It is constantly pointed out to them that they have no voltage, except for a student.

They reiterate that he makes inappropriate comments."

26. That on May 24, 2019, Prof. Vivian Vélez Vera, Interim Dean of Academic Affairs, contacted Ms. Marisol Díaz Ocasio, Student Attorney, to inform her that the students of the MATE 3012 course had referred an issue of hostile and inappropriate environment.

27. That the document titled "Declaration" and subscribed by the student Génesis Vélez Feliciano, contains an error in date, since the correct date should have been June 4, 2018. (Exhibit 2 of the Complainant, Annex 3)

28. That Professor Jorge Torres Bauzá personally delivered to the Respondent the document titled "Declaration" subscribed by the student Génesis Vélez Feliciano. (Exhibit 2 of the Complainant, Annex 3) although he could not specify what date.

29. That the Respondent upon receiving the document titled "Declaration" subscribed by the student Génesis Vélez Feliciano retained it and delivered it in the afternoon to Prof. Torres Bauzá with a note in his handwriting that reads as follows[:] "*I do not accept the comments but Prof. Torres Bauzá showed me the letter.*" (Complainant's Exhibit 3)

30. That on June 5, 2018, the student Génesis Vélez Feliciano subscribed the document titled "Complaint Form of Title IX" against the Respondent. (Exhibit 2 of the Complainant, Annex 5)

31. **(Determination of fact #31 arising from the Examining Officer's Report is not adopted.)**

32. That through a document titled "Referral Title IX Case" subscribed on June 7, 2018 by Prof. Vivian Vélez Vera, Interim Dean of Academic Affairs (Exhibit 2 of the Complainant, Annex 1), the case of the student Génesis Vélez Feliciano was referred to the then Interim Rector, Dr. José L. Heredia Rodríguez, for investigation.

33. That on June 11, 2018, Prof. Vivian Vélez Vera, Interim Dean of Academic Affairs, handed to the Respondent the draft of the Minutes of the meeting she had with him on May 24, 2018 (Exhibit 4 of the Respondent) and that when the document was handed, the Respondent told her that he would seek legal advice.

34. That the respondent did not sign the draft Minutes of the meeting of May 24, 2018. (Exhibit 4 of the Respondent)

35. That on July 11, 2018, the student Génesis Vélez Feliciano submitted an Affidavit before the Notary Public Felipe Algarín Echandi. (Complainant's Exhibit 2, Annex 6)

36. That on August 8, 2018, the Respondent requested sick leave for the semester from August to December 2018.

37. That on August 16, 2018, Prof. Vivian Vélez Vera, Interim Dean of Academic Affairs, Dr. María S. Rodríguez, Dean of Student Affairs and Ms. Marisol Díaz Ocasio, Student Attorney submitted a document titled "Complaint Report Sexual Harassment Title IX Case." (Exhibit 2 of the Complainant)

38. That with the "Complaint Report Sexual Harassment Case Title IX" (Exhibit 2 of the

Complainant) the Informal Process in the present case was completed, as established in Certification No. 130.

39. That the Formal Process in the present case, as established in Certification No. 130, began with the (sic) Formulation of Charges" on October 12, 2018, subscribed by Dr. José L. Heredia Rodríguez, Interim Rector.

Additional Determinations of Proven Facts, According to the Evidence that Arises from the Administrative Record and that Presented and Admitted During the Administrative Hearings:

40. That the student David Ureña Negrón declared that he observed Professor Arana's attitudes in the classroom and his behavior directed to the student Génesis Vélez Feliciano and perceived her discomfort with it.

41. That the student David Ureña Negrón noticed that on repeated occasions Professor Arana literally pressed himself against the student Génesis' desk, put his hands in his pockets and pulled up his pants completely towards the belly area and that he felt uncomfortable.

42. That the student David Ureña Negrón indicated that he perceived the discomfort of the student Génesis Vélez Feliciano and told her "sit with me in the back of the room because she felt more comfortable there." That the next class Génesis sat in the back and that the Professor told her not to sit in the back because she would damage herself and that Génesis had to move back to the front.

43. That the student David Ureña Negrón asserted that Professor Arana made comments in the classroom directed at the student Génesis Vélez and indicated that they did not have voltages but that Génesis did have voltages. He stated that the Professor brought his face closer to the student (face to face), that told Génesis that she liked men with money and strong men, that he made comments referring to her boyfriend and that he could not do the exercises on his mind. He declared that Professor Arana's behavior made him and the entire class feels uncomfortable and that it had nothing to do with the mathematics course.

44. That the student David Ureña Negrón added that these comments made him feel uncomfortable as a man, that he felt uncomfortable because of the comments and gestures directed at the classmate Génesis Vélez and that it was not an environment to take classes.

45. That student Esteban J. Tellado Zequeira stated that he observed Professor Arana's uncomfortable and out of place behavior in the classroom. That Professor Arana's behavior was unethical towards classmate Génesis Vélez, that it was behavior that was out of place that made fellow Génesis uncomfortable.

46. That the student Esteban Tellado declared that Professor Arana approached the classmate without her authorization, he approached the student's desk, placing his body extremely close to hers, and he pulled up his pants. That he put his hands in his pockets and raised his pants extremely high, not pleasant because he raised his pants to the level of marking his genitals, his private parts towards his classmate, extremely

close to her. That this behavior was insinuating and uncomfortable.

47. That the student Esteban Tellado declared that Professor Arana made comments alluding to the preference of men the classmate liked, that she liked strong men with money.

48. That the student Jann Romero Santiago established that the semester began and the objective of the class became confusing since Mr. Arana began to take an interest in one of the students. He stated that he saw Professor Arana how he spoke to the student Génesis Vélez and that it was not a way to speak normally. He established that Professor Arana stood right in front of the student's desk, put his hands in his pockets and made movements in an unusual way, in a very harassing manner and invading her space and that he got too close to her.

49. That the student Jann Romero Santiago added that it was hostile behavior towards the student Génesis Vélez.

50. That from the Minutes of the meeting held on May 24, 2018 with the student Génesis Vélez Feliciano, it emerges "that these gestures and expressions are not desired". (Exhibit 2 of the Complainant, Annex 4)

51. As a precautionary measure, the UPRU administration removed the student from the MATE 3012-M25 course. (Complainant's Exhibit 2)

52. That on June 26, 2018, Prof. Luis Arana went to UPRU and met with the Interim Rector, Dr. José Heredia, who told him that he was the subject of an investigation about a complaint filed by a student

for sexual harassment. (Sections 31 to 39 of the document "Reply to the Notification of December 16, 2018 on Formulation of Charges for Violation of the Institutional Policies on Sexual Harassment" subscribed by the Respondent that it is in the record.)

53. That on June 28, 2018, Rector José Heredia Rodríguez addressed a written communication to Dr. Luis Arana through which notified him that as part of the complaint related to Title IX, Sexual Harassment, which had previously been notified by Prof. Torres Bauzá and of which he had been shown the letter subscribed by the student, the complaint was in the process of investigation. (Paragraph 45 of the document "Reply to the Notification of December 16, 2018 on the Formulation of Charges for Violation of the Institutional Policies on Sexual Harassment" subscribed by the Respondent that it is in the record.)

Applicable Law

General principles

Law No. 1 of January 20, 1966, as amended, better known as the Law of the University of Puerto Rico, establishes:

> **Article 1. – Statement of Motives of the Law. (18 L.P.R.A. § 601 note)**
>
> This law has the purpose of reorganizing the University of Puerto Rico, reaffirming and strengthening its autonomy and facilitating its continued growth. The University of Puerto Rico will continue to be a public corporation.

Article 2. - Objectives of the University of Puerto Rico. (18 L.P.R.A. § 601)

A. The University, as an organ of higher education, due to its obligation to serve the people of Puerto Rico and due fidelity to the ideals of an integrally democratic society, has as its essential mission to achieve the following objectives, with of which the broadest freedom of teaching and scientific research is consubstantial:

(1) Transmit and increase knowledge through science and the arts, putting it at the service of the community through the action of its teachers, researchers, students and graduates.

(2) Contribute to the cultivation and enjoyment of the ethical and aesthetic values of culture.

B. In the loyal fulfillment of its mission, the University must:

(1) Cultivate the love of knowledge as a way of freedom through of the search and discussion of the truth, in an attitude of respect for creative dialogue.

(2) Preserve, enrich and disseminate the cultural values of the Puerto Rican people and strengthen the awareness of their unity in the common enterprise of democratically solving their problems.

(3) Seek the full formation of the student, in view of his responsibility as a servant of the community.

(4) Fully develop the intellectual and spiritual wealth latent in our people, so that the values of intelligence and spirit of the exceptional personalities that emerge from all social sectors, especially those less favored in economic resources, can be put into practice at the service of the Puerto Rican society.

(5) Collaborate with other organizations, within their own spheres of action, in the study of the problems of Puerto Rico.

(6) To keep in mind that due to its character as a University and its identification with the ideals of life of Puerto Rico, it is essentially linked to the values and interests of every democratic community.

For its part, the **General Regulations of the University of Puerto Rico** promulgate in its Article 9 - Compliance with Fundamental Objectives and Duties of the University, the following:

Each member of the university academic community, from the perspective of their particular functions and responsibilities, must ensure faithful compliance with the mission, objectives and fundamental duties of the University, as expressed in Article 2 of the Law of the University of Puerto Rico . . .

Article 35 of the General Regulations Establishes in Relevant Part- Disciplinary Actions

Section 35.1- General provisions

Section 35.1.1- Goals in personnel relations

Appointing authorities, and supervisory officials at all levels of the university hierarchy, will take positive action aimed at ensuring that the mutual relations of university staff in all classifications develop within an institutional climate of harmony, respect and fraternity.

Section 35.2 - Conduct subject to disciplinary action

Section 35.2.8 - Acts that under the canons of moral responsibility prevailing in the community constitute immoral conduct.

Section 35.2.19- Violations of the University Law, the provisions of these Regulations and other university regulations.

Section 35.3 - Disciplinary Sanctions

The disciplinary sanctions that will be applied and recorded in the official file of the affected employees will be the following:

Section 35.3.1- Oral warning.

Section 35.3.2 - Written warning.

Section 35.3.3 - Suspension of employment and salary, for a defined term that will not exceed six (6) months.

Section 35.3.4- The dismissal, with the consequent disqualification from serving the University, unless rehabilitation is formally determined, in accordance with the regulations established for this purpose.

Article II, Section 1, of the Constitution of the Commonwealth of Puerto Rico provides that

> "The dignity of the human being is inviolable. All men are equal before the law. No discrimination may be established on the basis of race, color, sex, birth, origin or social condition, or political or religious ideas. Both the laws and the public education system will address these principles of essential human equality."

In the same way, it protects us against abusive attacks on honor, reputation, to private or family life, Art, II, Sec. 8, Const. P.R.

Title IX of the Federal Education Law,

Law 92-318 of June 23, 1972, as amended, known as Title IX of the Education Amendments of 1972, of the federal legal system, prohibits discrimination based on sex in any education or training program that receives financial assistance from the Federal Government. The Supreme Court of the United States stated that the provisions of this law apply equally to students and teachers and, therefore, absolutely prohibit discrimination based on sex in the aforementioned programs. Under interpretive jurisprudence, conduct constituting sexual harassment in educational institutions is covered under this law and constitutes a form of discrimination based on sex.

Law Number 17 of April 22, 1988

established sexual harassment as a form of discrimination based on sex and prohibited this type of

conduct in the workplace. The Act establishes the affirmative responsibility of the employer in the prevention of sexual harassment in employment, as well as for the commission of it. As pertinent, the following articles are established:

> Article 3 - Sexual harassment in employment consists of any type of unwanted sexual approach, requests for sexual favors and any other verbal or physical conduct of sexual nature when one or more of the following circumstances occur:
>
> (a) When submitting to such conduct becomes implicitly or explicitly a term or condition of a person's employment.
>
> (b) When the submission or rejection of said conduct by the person becomes the basis for making decisions in employment or regarding employment that affect that person.
>
> (c) When that conduct has the effect or purpose of unreasonably interfere with that person's job performance or create an intimidating, hostile or offensive work environment.
>
> Article 4 - To determine whether the alleged conduct constitutes sexual harassment in employment, the **totality of the circumstances in which the events occurred** will be considered. The determination of the legality of an action **will be made based on the facts of each particular case**.
>
> Article 10-**Every employer has the duty to keep the workplace free of sexual**

harassment and intimidation and must clearly explain his policy against sexual harassment to his supervisors and employees and will ensure that they can work with safety and dignity. In compliance with the obligation imposed on the employer to prevent, discourage and avoid sexual harassment in the workplace, the employer must take the measures that are necessary or convenient for that purpose, including, but not limited to, the following:

(a) Clearly expressing to supervisors and employees that the employer has a strong policy against sexual harassment in the workplace.

(b) Implement the necessary methods to raise awareness and publicize the prohibition of sexual harassment in employment.

(c) Provide sufficient publicity in the workplace, for applicants for employment of the rights and protection that are conferred and granted to them under this Law, under the protection of Law No. 69 of July 6, 1985, of the Law No. 100 of June 30, 1959, as amended, and of the Constitution of the Commonwealth of Puerto Rico.

(d) **Establish an adequate and effective internal procedure to address complaints of sexual harassment.** *Emphasis supplied*

Subsequently, the Legislative Assembly promulgated **Law Number 3 of January 4, 1998, known as the Law to Prohibit Sexual Harassment**

in Educational Institutions, in which recognized sexual harassment in the context of educational institutions, as well as its particular implications on the right to education. This provided the student with various remedies, such as filing a complaint with the educational institution, among others. The Legislative Assembly imposed various obligations on educational institutions in order to prevent, discourage and avoid this type of conduct, as well as civil liability for actions that constitute sexual harassment. 3 L.P.R.A. secs. 149e-149i. For these purposes, the degree of responsibility imposed on the teaching institutions varies depending on the harasser's relationship with the institution. In regard to actions constituting sexual harassment by their teaching and non-teaching staff, it will be responsible "regardless of whether or not the specific acts in dispute were prohibited by the educational institution, and regardless of whether the institution and the teacher and non-teacher staff knew or should have been aware of the prohibition of the conduct." 3 L.P.R.A. sec. 149e.

The statement of motives of the aforementioned Law No. 3 establishes in the pertinent part:

> "The magnitude of the problem of harassing in the educational context has been the subject of studies in the United States and Puerto Rico. In these studies it has been concluded that awareness around the problem is increasing and **that harassment manifests itself mainly in the teacher-student relationship and mostly against women. It was also found that harassing behavior is varied, including verbal harassment, lascivious looks,**

> **inappropriate comments, body rubbing, pressure and invitations with sexual content, implicit demands for sexual favors and physical attacks.** *Emphasis supplied*

Art. 4 of the aforementioned Law No. 3 establishes the following:

> "**Sexual harassment in educational institutions consists of any type of unwanted explicit or implicit sexual conduct or approach towards any student of the institution** committed by a principal, school superintendent, supervisor, agent, student, person not employed by the institution, teacher or employee of the teaching or non-teaching staff of the institution. Unwanted sexual harassment will be understood as the request for sexual favors and any other conduct, explicit or implicit, verbal or physical of a sexual nature towards the student when one or more of the following circumstances occur:
>
> (a) **When that unwanted conduct or approach-has the effect or purpose of intimidating, threatening the student, unreasonably interfering with that person's studies performance or when it creates an intimidating, hostile or offensive study environment.**
>
> (b) When the subjection or rejection of said unwanted behavior or approach by the person becomes basis for making decisions

regarding any aspect related to the person's studies.

(c) When submitting to said unwanted conduct or approach becomes implicitly or explicitly a condition of remaining in the educational institution. Art. 4, Law 3-1998, 3 L.P.R.A. sec. 149c.

Art. 5 of Law No. 3 also establishes that to determine whether the alleged conduct or unwanted approach constitutes sexual harassment, the totality of the circumstances in which the events occurred will be considered.

Article 9 of Law 3 establishes the following:

"Every educational institution has the obligation to keep the educational center **free of sexual harassment and intimidation** and will clearly state its policy against sexual harassment to students, teaching and non-teaching staff. It will ensure that the students can study with safety and dignity. Complying with the obligation imposed on the teaching institutions to prevent, discourage and avoid sexual harassment in the study center, it must take the measures that are necessary or convenient for that purpose including, but not limiting itself to:

a) Clearly express to students, teaching and non-teaching staff that the institution has a strong policy against sexual harassment at the study center.

b) Prepare a regulation that establishes the responsibilities, procedures and penalties

that will be applicable at the study center to address complaints of sexual harassment and those that arise as a result of frivolous approaches by unscrupulous people or students.

c) Provide publicity in the institution so that students know the rights and protection that are conferred and granted to them by this Law.

d) Design and implement the necessary methods to raise awareness and publicize the prohibition of sexual harassment in the study center.

In accordance with these purposes, the University of Puerto Rico promulgated the **Institutional Policy Against Sexual Harassment at the University of Puerto Rico**, Certification Number 130 (2014-2015) of the Governing Board, hereinafter Certification No. 130). In it prohibited conduct that presents aspects of harassment or sexual discrimination regardless of the hierarchy, position or sex of the people involved. Certification No. 130, cited above, provides the following:

Article IV – Definitions

For the purposes of this Policy, the following terms are defined:

> E. Sexual Harassment - Conduct of a sexual nature and other behaviors of sexual connotation unwanted or rejected by the person against whom said conduct is directed and that affects the dignity of the person, as defined in Law No. 17 of 2008, as amended. . . .

I. **Complaint-Verbal or written request or claim** from an official, student, employee, job applicant, contractor or visitor of the University of Puerto Rico, in which he or she alleges that he or she was or is the object of sexual harassment by an employee, student, visitor or contractor of the University of Puerto Rico or retaliation. Emphasis supplied . . .

J. **Complainant-A person who files a complaint claiming to be the target of or witnessed such act against another person**, with the right to file a complaint in accordance with the established Sexual Harassment or Retaliation Policy. *Emphasis supplied.*

K. Complaint-Formulation of charges presented by the appointing authority against the respondent, after carrying out an investigation of the facts alleged in a complaint, and it understanding that charges should be filed against him or her.

L. Complainant-Appointing authority or authorized representative of the University of Puerto Rico who files a Complaint in case of sexual harassment or retaliation. . . .

Article V - Institutional Policy and Objectives

Sexual harassment in employment and in the study environment is an illegal and discriminatory practice, foreign to the best interests of the University of Puerto Rico. **Under no circumstances will any person be allowed to create a work or study environment characterized by sexual**

harassment in any of its forms and manifestations. *Emphasis supplied*

In the faithful compliance of this responsibility, this Institutional Policy will be disclosed to all employees and students, they will be guided on the prohibition of sexual harassment in employment and study environment. All officials and students will be responsible for immediately reporting any known complaint or act of sexual harassment.

Article VIII-Sexual Harassment and Its Modalities

A. Sexual harassment in employment, study environment or provision of services consists of any type of unwanted sexual approach, requests for sexual favors, or any other verbal or physical conduct of a sexual nature or that is reproduced using any means of communication, including, but not limited to, the use of multimedia tools through the cyber network or by any electronic means or when one or more of the following circumstances occur:

1. When submitting to such conduct becomes implicitly or explicitly a term or condition of a person's employment, studies or services.
2. When the person's submission to rejection of said conduct becomes the basis for decision-making regarding any aspect related to employment or studies that affect that person.
3. When that conduct has the purposeful effect of unreasonably interfering with the performance of that person's work or studies or when it creates an intimidating, hostile or

offensive work or study environment. *Emphasis supplied*

B. Sexual harassment applies to situations in which the prohibited conduct occurs between people of the same sex or opposite sexes. There are two (2) modalities:

1. Quid pro Quo-Harassment that involves sexual favors as a condition or requirement to obtain benefits in employment, study or service. This type of harassment manifest itself when the submission or acceptance of this conduct becomes, explicitly or implicitly, one of the terms or conditions of a person's employment or studies, or when the submission, acceptance or rejection of the prohibited conduct becomes grounds for making decisions in employment or studies that affect that person.

2. **Hostile or offensive work or study environment**-Sexual harassment that, although it does not have an economic impact, creates a hostile or offensive environment in the work or study environment. Thus, it constitutes sexual harassment to subject the person to expressions or acts of a sexual nature, in a generalized or severe manner that has the effect of altering their employment or study condition **or creates a hostile and/or offensive work or study environment**, including the use of the information technology resources of the University of Puerto Rico or private electronic means to cause a hostile work or study environment. *Emphasis supplied*

The Certification also establishes the procedures to follow for handling complaints under this modality through an informal procedure for the investigation and attention of complaints and a formal procedure when it is determined that charges are appropriate as a result of the investigation. This procedure is framed in accordance with the provisions of the Uniform Administrative Procedure Act of the Government of Puerto Rico.

Article IX - Informal Procedure

A. Any person who believes that it have been subjected to actions that constitute sexual harassment at the University of Puerto Rico may complain so that it is investigated, if necessary, and the corresponding action is taken by the university authorities. This applies to the relationship between faculty-student, employee-student, employee-employee and supervisor-employee or vice versa, members of the community, [and] applicants for employment or admission to the University. Also, it includes contractors and visitors in situations analogous to those mentioned.

B. If the claimant is an employee or official of the University, they must contact their supervisor, dean or director of the office to which they are assigned. Said official must immediately refer the matter to the corresponding Human Resources Office. In any case, the complainant may initially go to the Director of the corresponding Human Resources Office. Also, it could be referred to the Office of Equal Employment Opportunity in campus for orientation and subsequent referral to the Human Resources Office.

C. **If the complainant is a student, he or she must refer his or her complaint to the Student Attorney Office or the Dean of Students Office.**

D. If the complainant is a contractor or visitor, he or she must refer his or her complaint to the Human Resources Office of the institutional unit where the events that are the subject of the complaint arose.

E. The written complaint or the initial report on the verbal complaint must contain the following information:

1. Name of the complaining party.
2. Contact information.
3. Date and place in which the events occurred.
4. A succinct list of the facts.
5. Name of witnesses and the person against whom the harassment complaint is filed.

F. Informal processes will be confidential and no information will be disclosed to third parties unrelated to the situation. The wishes, concerns and interest expressed by the claimant will be addressed as a priority, to the extent possible.

G. In order to protect the claimant and as quickly as possible, provisional measures may be established that are possible and convenient, such as:

1. Ensure that the claimant reports to another supervisor and the communications between the claimant and its supervisor be made through that other supervisor, in cases when the supervisor is the respondent party.

2. Ensure that the employment relationship is in the presence of other people, so that the complaining party does not have to interact alone with the respondent party in the course of their work.

3. Any other particular measure that is necessary under the circumstances of the case.

These provisional measures may be taken motu proprio by the Rectors or President or their authorized representative, as the case may be, or may be requested by the parties immediately after the complaint has been presented and if imposed, they will be effective during the time in which the investigation is processed and until the complaint is adjudicated. For the adoption of these measures, the interest of the claimant will be taken into account.

These measures will not constitute a disciplinary sanction against the party to whom they are applied.

H. The investigation will have sworn statements by the complainant and the person against whom the complaint is filed and any person who knows part or all of the alleged facts. The complainant's past sexual history or behavior will not be inquired into or taken into account for any purpose of the investigation. The way in which the complainant dresses is a matter unrelated to the controversy, so it should not be brought into consideration in the investigative process.

I. **The person against whom a complaint is filed will be given the opportunity to be informed of the allegations against him or her, and to**

present his or her position and defenses. Provided, however, that at this stage of the procedures there will be no right to the guarantees of due process of law recognized in the formal procedures. However, he may attend the meeting accompanied by a lawyer. *Emphasis supplied*

J. **If the complainant does not participate in the investigation or decides to withdraw the complaint, the investigative process will continue, taking into consideration this fact and all available evidence.** *Emphasis supplied*

K. **The investigation must be initiated within a reasonable period of time, which should not be more than seven (7) business days to ensure the prompt resolution of the complaint. Within a reasonable period of time, no more than fifteen (15) business days, except in exceptional circumstances, the office in charge of the situation, as the case may be, will submit a report to the appointing authority with the result of the investigation and its recommendations.** *Emphasis supplied*

L. If it is determined that the formulation of charges is appropriate, the formal procedure will begin. In any instance, the parties will be notified of the appointing authority's determination.

Article X - General Provisions

. . .

C. Acts of sexual harassment can come from supervisors to employees and/or third parties, such as visitors, from employee to employee, from teachers to

students, from students to students and from employees to students, or vice versa, for all cases. **Any complaint, information or notification about alleged acts of sexual harassment that is received will be the subject of a prompt and thorough investigation and, after determining the veracity of the allegation, the appropriate corrective action or measure will be taken to solve the problem.** In the event that the acts of sexual harassment come from third parties not employed by the University, the necessary corrective measures will be taken that are reasonably within the reach of the University and that are legally appropriate for the immediate cessation of that conduct. The above list of possible scenarios should not be considered exhaustive. *Emphasis supplied*

Article XI - Formal Procedure

A. The formal procedure will begin with the formulation of a written complaint by the corresponding appointing authority of that institutional unit in which the person against whom the complaint is filed provides services or pursues studies. **This is with a view to the imposition of the corresponding disciplinary sanction according to the General Regulations of the University of Puerto Rico** or the General Regulations of Students, as applicable. *Emphasis supplied*

B. The complaint must contain:

1. Concise list of the conduct that the accused person allegedly observed.

2. A specific list of the legal and regulatory provisions allegedly violated and the proposed disciplinary sanctions.
3. Warn the accused person of his or her right to representation by a lawyer.
4. Warn, moreover, the accused that failure to respond to the complaint within fifteen (15) labor days after receiving notice of the complaint, the Examining Officer shall proceed to set the date and celebrate the administrative hearing and may emit a default judgment. If the accused were a student, the period in which to respond to the complaint shall not exceed thirty (30) calendar days, in accordance with the General Student Regulations.

C. The complaint will be notified to the accused person within a period of no more than fifteen (15) calendar days computed from the moment it is filed.

Article XIV - Report of the Examining Officer

After concluding the hearing, the designated Examining Officer will submit a written report to the appointing authority of the institutional unit in which the accused person provides services or studies. Said report must contain:

1. List of proven facts.
2. List of the legal conclusions formulated.
3. Recommendation regarding the disposition of the case. Unless there is just cause, the report must be submitted within a period of

no more than thirty (30) calendar days, counted from the time the case is submitted for resolution.

Article XV - Appointing Authority

The nominating authority of the institutional unit in which the accused person provides services or studies will decide the case after evaluating the report of the Examining Officer and will impose the disciplinary sanction, if any, that corresponds, as provided in the General Regulations of the University of Puerto Rico or the General Student Regulations. It will notify its decision to the accused person in writing and by certified mail with return receipt and will warn him of his right to appeal the decision before the forum [sic] and within the term established by the regulations on appeal procedures. The appointing authority will inform the alleged victim of the final result in writing, by certified mail with return receipt.

For its part, the Supreme Court in the case of **University of Puerto Rico V. Lorenzo Hernández**, 184 DPR 1001 (2012), explained that to evaluate the type of hostile environment in each case, as a general rule, it will be necessary to carry out a subjective and objective analysis considering the totality of the circumstances in which the events occurred. It arranged:

> *"It should be noted that although we encompass the entire subsection under* ***the modality called "hostile or intimidating environment", the Legislative Assembly has determined that this is configured*** *in educational institutions when a person's sexual conduct has the purpose or effect to intimidate, threaten the student or*

unreasonably interfere with his or her academic performance or ***when sexual conduct makes the educational environment intimidating, hostile, or offensive****. Art. 4, Law No. 3, supra.* ***The Legislative Assembly also emphasizes through the Statement of Motives of the law that any of these circumstances is sufficient to hold the academic institution responsible. See Statement of Motives, Law No. 3, supra****. Emphasis supplied*

However, what constitutes sexual conduct under this modality cannot be evaluated exclusively based on the perception of one of the parties involved. To determine what conduct will be considered sexual harassment due to a hostile environment, it is necessary to analyze all the circumstances in which the events occurred. 3 L.P.R.A. sec. 149d. For this reason, the analysis of what constitutes sexual harassment, including the hostile environment modality, cannot be a merely mathematical one. It certainly cannot be a study in a vacuum, abstracted from reality, the people, place and time in which the events occur.

Furthermore, to determine what conduct constitutes sexual harassment and evaluates all the circumstances, it is necessary, as a general rule, to conduct a two (2) part analysis: subjective and objective.

On the one hand, subjective analysis ensures that the person affected by the behavior

considers it hostile, intimidating or offensive. In other words, it must be analyzed whether the student felt threatened; intimidated; if he perceived that the environment at the educational institution became intimidating, hostile, offensive, or interfered with his performance as a result of the harassing behavior. However, given that Law No. 3, supra, applies from the elementary level, we are aware that there may be students of tender age and maturity to whom it is unfair to require that they have perceived the conduct as intimidating, hostile or offensive. For that reason, there will be times when the subjective analysis is unnecessary. However, the behavior should always be analyzed under an objective crucible.

The purpose of the objective analysis is to determine whether the conduct can reasonably be understood as threatening, intimidating, unreasonably interfering with the student's studies, or creating a sufficiently hostile environment for the student, by considering the totality of the circumstances of each case.

When making an objective analysis in cases of sexual harassment in the worker-management context, we have mentioned factors such as: the nature of the alleged conduct, its frequency and intensity, the context in which it occurs, the period of time and its extent, and the conduct and personal circumstances of the plaintiff. See, generally, Delgado Zayas v. Hosp. Med. Int. Advanzada., supra; Rodríguez Meléndez v. Sup. Amigo,

Inc., supra. In labor-management cases, it is common to use the sexual harassment guidelines issued by the Equal Employment Opportunity Commission. 29 C.F.R. sec. 1604.11. See, Rodríguez Meléndez v. Sup. Amigo, Inc., supra, pp. 130-131.

Similarly, the Federal Department of Education has designed the Revised Sexual Harassment Guidelines: Harassment of Students by School Employees, Other Students and Third Parties (hereinafter Guides). These were designed following the federal statute against discrimination in educational institutions. Title IX of the Federal Education Law, supra. The Guides constitute a source of great help to the judger as they illustrate when evaluating various factors on what constitutes sexual harassment due to a hostile environment.

Some of the factors included in the Guidelines that help carry out the objective analysis to evaluate whether hostile environment sexual harassment occurred are: first, the degree to which the conduct affected the student; second, the type, frequency and duration of the behavior; third, the identity and relationship between the alleged harasser and the student; fourth, the number of individuals involved; fifth, the age and sex of the alleged harasser and the victim; sixth, the location of the incident, the size of the educational institution and the environment in which the events occurred; seventh, other incidents at the institution; and eighth,

> *incidents that are gender-based, even if they are not harassment of a sexual nature.*
>
> *However, this mention of factors is numerus apertus. Only after conducting an analysis of these and other relevant factors, on a case-by-case basis, can an objective conclusion be reached as to whether the unwanted sexual approach can reasonably be considered harassment for the purposes of Law No. 3., supra." Sic*

Finally, the Supreme Court established in the case **Rosa Maisonet v. Administración de Servicios Médicos**, 2015 TSPR 19, the following: "Anyway, today we resolve that Law No. 17, supra, does not require an employer to prove a prima facie case of sexual harassment of his employee in order to be able to fire him as a sanction for failing to comply with his company's sexual harassment rules. What Law No. 17, *supra*, requires of every employer is the duty to carry out affirmative acts to discourage sexual harassment in the workplace and actively promote a prevention policy. In this exercise, Law No. 17, supra, does not prevent an employer from choosing to limit himself to the minimum guidelines listed in the Law from choosing to be more rigorous and proactive in adopting measures to effectively combat sexual harassment in his workplace. This, as long as the rules and the corresponding sanctions contained in said Regulations are reasonable."

ANALYSIS AND APPLICATION OF THE LAW TO THE FACTS

A. Regulations

In this particular case, the respondent was the subject of complaints filed by students of the MATE 3012 M-25 course. And in particular, a complaint was filed by the student Génesis Vélez Feliciano for inappropriate conduct that activated the protocols corresponding to the institutional policies against sexual harassment at the University of Puerto Rico. It emerges from the evidence presented and admitted that due to the nature of the matter, since it was a complaint that had two aspects, both academic and the issue of inappropriate behavior of the respondent, the procedure was worked on jointly between the Dean of Academic Affairs and the Dean of Student Affairs. The Interim Dean of Academic Affairs, Dr. Vivian Vélez Vera, received the complaints and proceeded to notify the Dean of Students, Dr. María Rodríguez Sierra, and the Student Attorney, Marisol Díaz Ocasio, who joined and worked on the informal investigative procedure.

It follows from the evidence in the record that the respondent was informed of the complaints presented by the students. The respondent was personally notified by the Interim Dean of Academic Affairs, Dr. Vivian Vélez Vera, in a meeting held on May 24, 2018 and, through the delivery of the Minutes of the meeting held on May 24, 2018. (Proven Fact 24 of the Report of the Examining Officer.) He was also informed of the allegations presented against him by the student Génesis Vélez Feliciano, through the document entitled "Declaration", submitted by the student

that contained the acts accused against the respondent (stipulated fact number 9 of the Report of the Examining Officer) and that, according to the evidence presented, it was personally delivered to the respondent by Prof. Jorge Torres Bauzá, who at the date of the events held functions as Interim Director of the Department of Natural Sciences, and was his immediate supervisor. (Exhibit 3 of the Complainant and Proven Fact 28 of the Report of the Examining Officer.) It also follows, as a proven fact of the case, that when the respondent received the document titled "Declaration" and submitted by the student, he retained it, and delivered it in the afternoon to Professor Torres Bauzá with a note in his own handwriting that reads as follows: "*I do not accept the comments but Professor Torres Bauzá showed me the letter.*" ((Proven fact 33 of the Report of the Examining Officer and Exhibit 3 of the Complainant.)

During the informal procedure, in addition, the respondent held a meeting with the then Interim Rector, Dr. José Heredia Rodríguez, in which it was reiterated that he was the subject of an investigation for alleged acts of sexual harassment. Likewise, the Interim Rector sent him a communication on June 28, 2018 in which he reiterated the student's complaint and the procedure that was followed at the institution. These facts were ratified by the respondent, through the document he submitted titled "Reply to the Notification of December 16, 2018 on Formulation of Charges for Violation of the Institutional Policies on Sexual Harassment", specifically in paragraphs 20, 24, 38 and 45, which is part of the administrative record.

Likewise, we cannot ignore that the respondent, acting as a Professor at the University of Puerto Rico, as part of his duties and responsibilities, knew or should have known the institutional regulations in this regard, since he is one of the people in charge of executing and ensure its compliance. In fact, it arises from the administrative record, as reiterated by the respondent through his writings, that he had previously been subject of another complaint for violations of the institutional policy against sexual harassment.

On the other hand, despite the fact that Art. IX (K) of Certification No. 130 provides for a period of fifteen (15) days for a report to be submitted to the appointing authority with the result of the investigation and its recommendations, it is also established that in exceptional circumstances, this term may be extended. That is, the terms established in said provision can be extended, therefore, they are not jurisdictional or of expiration.

It emerges from the evidence presented that even though the respondent was informed of the allegations against him and the investigative procedure being conducted by the University, the respondent stated that he would seek legal advice. (Fact proven in paragraph 33 of the Report of the Examining Officer.) However and despite the time he had to present his position and defenses, in response to the complaints presented, it does not appear from the evidence presented that he did so.

Likewise, the fact that the report was submitted within a period after the established fifteen (15) days did not undermine the rights of the respondent, in light of the fact that Certification No. 130 (2014-2015) in its Art. IX (K) does not provide for the report to be

notified to the complaining party, for it will be submitted to the appointing authority. Therefore, we see no reason why the failure to comply with the deadline for submitting the report has injured any right of the respondent.

Certification No. 130 previously stated establishes, Article IX (L), that after evaluating the report, if the appointing authority determines that the formulation of charges is appropriate, it will begin the formal procedure, where the parties will be notified of the determination. This formal procedure will activate the constitutional guarantees of due process of law. In this case, when evaluating the investigation report submitted on August 16, 2018 and the recommendations contained therein, the Rector determined to file charges against the respondent and activated the formal procedure as established by Certification No. 130, which has provided the respondent with the constitutional guarantees of due process of law.

Due to the above, we differ in the conclusion of the Examining Officer, by which he establishes that the respondent was not adequately informed of the informal process and that it was not carried out in an adequate or timely manner, as it was handled by officials to whom it did not correspond and by unjustifiably delaying in completing the investigation and submitting the corresponding report. Certainly, the respondent was informed and was aware of the allegations made against him. The respondent was aware of the relevant regulations, however, the respondent did not cooperate with the procedure. Likewise, the investigation in its informal stage was attended to by the university staff who received the complaints and who notified the Student Attorney and

the Dean of Students from the beginning, who joined the procedure and who worked together through the informal stage until issue the investigation report. Likewise, we cannot conclude that Certification No. 130 is exclusive in terms of the university officials identified as those responsible for referring the complaints presented. Due to the above, we proceed to ratify compliance with the informal procedure.

B. Sexual Harassment (Certification 130) and Violations of the General Regulations of the University of Puerto Rico, (Art.35.2.8 and Art. 35.2.19)

After evaluating all the evidence in the administrative record, as well as the recordings of the administrative hearings, which is uncontroversial, since there is no allegation or evidence from the respondent to the contrary, it was established that since the beginning of the semester and frequently, Dr. Luis S. Arana Santiago, clung to the desk of the student Génesis Vélez Feliciano and put his hands in his pants pockets. That, when he put his hands in his pockets, he pulled up his pants. That he approached the student in a way that invaded her space. That he made comments to the student that she had "voltages", but the other students did not. That he was referring to the student and made comments to her that she liked men with money and strong men, as well as comments regarding whether her boyfriend could do his mind exercises. (*Determinations of facts number 3 to 7 of the Report of the Examining Officer and Determinations of Additional Facts number 40 to 49.*) As emerged from the testimonies, this conduct was perceived by the students as uncomfortable and hostile and the students filed complaints about it with the university

authorities. (*It arises from the Additional Proven Facts number 40 to 49 and the stipulated fact number 6 of the Report of the Examining Officer.*)

Having established the behavior exhibited by the respondent in the classroom during the academic semester as a proven fact, it remains to establish whether said conduct constitutes sexual harassment under the current institutional regulations set forth above.

Having carried out an analysis of the totality of the particular circumstances of this case, we reasonably understand that the behavior shown by Dr. Luis S. Arana Santiago demonstrates that he took advantage of his authority, made inappropriate approaches and comments of an unwanted sexual nature that created a hostile environment that deprived the student of a environment free of sexual harassment. Without a doubt, these actions constitute inappropriate behavior that is distant from his duties and responsibilities and are contrary to the moral and regulatory canons prevailing in the community.

The Examining Officer established in his report:

> "*The students who declared that they felt very uncomfortable with the actions and expressions of the Complainant towards the student Génesis Vélez Feliciano, despite these expressions, they did not deserve credibility. We base this on the fact that the students alleged that this situation began in March 2018 and lasted until almost the end of the course and they only informed the Complainant when they presented their academic complaints, on the last day to*

> *withdraw partially, in May 2018." (Page 40 of the Examining Officer's Report.)*

When analyzing the testimony given by the students during the hearings together with the evidence in the record, we see no reason why we should not give credibility to the aspect of discomfort perceived by the students. The fact that the students presented the complaints almost at the end of the academic semester and that they were failing, contrary to the reasoning of the Examining Officer, does not lead us to conclude that it was the true reason for the students to complain about the behavior that they perceived as uncomfortable on the part of the Professor. The time or moment in which a complaint is filed for conduct of sexual harassment or constituting immoral behavior is not a determining element that should be taken into consideration to detract from the credibility of what was alleged by the students and reiterated through their testimonies. Therefore, the basis that the Examining Officer used to determine to subtract credibility from the students' testimony regarding the aspect of their perceived discomfort, in its application is incorrect.

The Examining Officer concludes in his Report that

> *"Although we understand that the conduct and expressions of the Complainant could be considered in bad taste and/or not appropriate for a classroom, we are of the opinion that these are not serious enough or of sexual connotation to be able to be perceived as sexual harassment by any other reasonable student." Emphasis supplied.*

Considering this matter, we understand that by concluding in this way and applying this interpretation we would be making a mistake and allowing impermissible behavior of a teacher towards the students and therefore a failure of the purpose pursued through the established institutional policies.

When evaluating the record and analyzing the totality of the circumstances, according to the facts proven in this case, from an objective point of view it is reasonable to conclude that Prof. Luis Arana Santiago incurred unethical and immoral conduct and acts constituting sexual harassment under the modality of a hostile, intimidating and offensive environment, contrary to the university policy and regulations that prohibit it. We have no doubt that the respondent's conduct could be perceived as sexual harassment by a reasonable student and this was evidenced through the clear testimony of the students.

On the other hand, it emerges as stipulated facts of the case that on May 24, 2018, the student Génesis Vélez Feliciano filed complaints with the university authorities for improper conduct of the respondent, Prof. Luis Arana Santiago; that on June 3, 2018, she made a declaration about the actions of the respondent where she established that she was interested in filing a formal complaint; that on June 5, 2018 she submitted a document titled "Title IX Complaint Form" and that on July 11, 2018 she submitted an Affidavit before the Notary Public Felipe Algarin Echandi, where she established the acts committed by the respondent. (Stipulated facts number 7, 9, 10 and 11 that arise from the Report of the Examining Officer.) It also emerges from the Minutes of the meeting held on May 24, 2018 with the student

Génesis Vélez Feliciano that, "Ms. Génesis Vélez Feliciano expresses on several occasions that these gestures and expressions are not desired." (Complainant's Exhibit 2, Annex 4.)

These manifest facts lead us to conclude that the respondent's behavior in the classroom was perceived by the student as hostile, intimidating and offensive behavior, that said behavior was not welcomed by the student and that for that reason she filed the complaints with the university authorities and reiterated them, thus configuring the subjective aspect established in the case UPR v. Lorenzo Hernández, supra. Due to the above, we discard the conclusion of the Examining Officer, by establishing that since the student did not appear at the administrative hearing, the content of his statements was not admitted and the subjective aspect could not be proven.

On the other hand, the fact that the affected student was failing, as well as the rest of the students in the course, does not change our conclusion that this behavior was incorrect and contrary to the moral and regulatory postulates of our institution.

Likewise, the issue established by the Examining Officer that the administrative record does not show that the student stated that said conduct was unreasonably interfering with her studies is not relevant to us, since according to what is established in Certification No. 130, as well as the applicable legislation set out above, it is not necessary that said conduct unreasonably interferes with the student's studies, it is sufficient that the conduct has created a hostile or offensive study environment. That is, any of the circumstances is sufficient to establish the responsibility of the respondent.

By examining as a whole the totality of the facts reported in conjunction with the established subjective and objective parameters, we can conclude that the respondent's conduct was explicit and implicit, both verbal and physical, which created an intimidating, hostile and offensive environment in the classroom, as perceived and reiterated by the students and by the student Génesis Vélez Feliciano, which constituted discriminatory behavior and constituted sexual harassment. The behavior of Dr. Luis S. Arana Santiago, instead of guaranteeing his students a dignified study environment, led to the diminishment of the student's dignity and the devaluation of her position as a woman.

CONCLUSION AND DETERMINATION

Having evaluated the totality of the particular circumstances of this case and in light of the facts proven by clear and convincing evidence and, in faithful compliance with the values, mission and objectives of this Institution, for the reasons set forth above, we conclude that the respondent Dr. Luis S. Arana Santiago incurred in violations of Article VIII (A) (3) and (B) (2) of the Institutional Policy Against Sexual Harassment at the University of Puerto Rico, Certification No. 130 (2014-2015) of the Governing Board, in accordance with the statutory provisions included, by creating an intimidating, hostile and offensive environment in the study environment of the University.

With the conduct shown, the respondent also incurred in violations of the General Regulations of the University of Puerto Rico, Certification 160 (2014-2015) of the Governing Board, as amended, Article

35.2.8 "Acts that under the canons of moral responsibility prevailing in the community constitute immoral conduct and Article 35.2.19 "Violation of the University Law, the provisions of this Regulation and other university regulations."

Having established a policy of zero tolerance against acts of sexual harassment in any of its modalities and manifestations, it is our responsibility to exercise affirmative measures to strictly comply with university policies and regulations and guarantee the integrity of the university population. As a higher education center we are responsible for maintaining an environment conducive to the teaching of the university population. We cannot remain blind to this type of behavior that lacerates institutional postulates and breaks the morality and responsibility of our institution.

For the reasons stated above and as an appropriate disciplinary measure, the IMMEDIATE DISMISSAL of Dr. Luis S. Arana Santiago is decreed, as Professor of the University of Puerto Rico and of any connection he has with the University, with his consequent disqualification to serve to the Institution.

YOU ARE ADVISED: Any party adversely affected by a partial or final resolution or order of a Rector may, within a period of twenty (20) days from the date of filing in the record of the notification of the resolution or order of the Rector, file a motion to reconsider the resolution or order before said Rector. If the Rector, at his discretion, decides to reconsider said resolution or order, he will notify the parties within a period of fifteen (15) days from the date of presentation of said motion. In the absence of any notification from the Rector, expressly stating his

intention to reconsider, the request will be deemed to have been rejected outright, in which case the period to appeal to the Office of the President of the University of Puerto Rico will not be deemed to have been interrupted. To appeal to the Office of the President of the University of Puerto Rico, a written appeal must be filed with said Office within the jurisdictional period of thirty (30) days from the notification of the resolution or order appealed from. The appeal document must specify the name, postal and electronic address of the appellant, decision or resolution from which it is appealed, indicate the issue or issues raised and will contain a brief and succinct list of the facts and legal grounds that give rise to the appeal and the relief requested. The appeal document must be signed by the appellant or his legal representative and a true and exact copy of the same must be notified to the official whose decision is appealed, on the same date on which it is filed, accompanied by the Resolution or Order of which appealed, in accordance with the Regulations on Administrative Appeal Procedures of the University of Puerto Rico.

I CERTIFY that I have sent by certified mail with return receipt, a true and exact copy of this Resolution and the Report of the Examining Officer to: Atty. Carlo I. Rivera Turner, PO Box 2833, Arecibo, PR 00613-2833; Dr. Luis S. Arana Santiago, HC 01 Box 2209 Morovis PR 00687; Atty. Beatriz A. Torres Torres, Calle Dr. Cueto 87, Suite #1, Utuado PR 00641; Atty. Luis Sevillano Sánchez PO Box 141118, Arecibo PR 00614-1118; Génesis Vélez Feliciano, 1200 Dallas Dr., Denton, Texas 76205.

Given in Utuado, Puerto Rico today December 20, 2019.

/s/ Luis A. Tapia Maldonado, DBA
Rector
University of Puerto Rico in Utuado
P.O. Box 2500
Utuado PR 00641-2500

APPENDIX C
DENIAL OF PETITIONER'S WRIT OF APPEAL, SUPREME COURT OF PUERTO RICO (OCTOBER 6, 2023)

DENIAL OF PETITIONER'S WRIT OF APPEAL, SUPREME COURT OF PUERTO RICO (OCTOBER 6, 2023)

IN THE SUPREME COURT OF PUERTO RICO
OFFICE ROOM I

DR. LUIS S. ARANA SANTIAGO,

Petitioner,

v.

DR. LUIS TAPIA MALDONADO, RECTOR OF THE UNIVERSITY OF PUERTO RICO IN UTUADO; DR. JORGE HADDOCK ACEVEDO, PRESIDENT OF UPR; GOVERNING BOARD OF THE UPR,

Respondents.

AC-2023-0057

Before: Oronoz RODRÍGUEZ, Presiding Judge, Mrs. Pabón CHARNECO, Associate Judge, Mr. Rivera GARCÍA, Mr. Estrella MARTÍNEZ, Associate Judges.

RESOLUTION

In San Juan, Puerto Rico, on October 6, 2023.

Once the appeal presented by the Petitioner has been examined, it is accepted as *certiorari*, for it is the appropriate writ, and it is denied.

It was agreed by the Court and certified by the secretary of the Supreme Court.

/s/ Javier O. Sepúlveda Rodríguez
Secretary of the Supreme Court
[SEAL]

APPENDIX D
DENIAL OF PETITIONER'S MOTION FOR RECONSIDERATION, COURT OF APPEALS OF PUERTO RICO (JUNE 22, 2023)

DENIAL OF PETITIONER'S MOTION FOR RECONSIDERATION, COURT OF APPEALS OF PUERTO RICO (JUNE 22, 2023)

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
SPECIAL PANEL

DR. LUIS S. ARANA SANTIAGO,

Petitioner,

v.

DR. LUIS TAPIA MALDONADO, RECTOR OF THE UNIVERSITY OF PUERTO RICO IN UTUADO; DR. JORGE HADDOCK ACEVEDO, PRESIDENT OF UPR; BOARD OF REGENTS UPR,

Respondents.

KLRA202100375

Administrative Review from the University of Puerto Rico, Governing Board of the UPR

Civil No.: JG 20-08
Subject: Disciplinary Action

Before: Bermudez TORRES, president, Judge, Rivera MARCHAND, Judge, Barresi RAMOS, Judge, Mateu MELENDEZ, Judge.

In San Juan, Puerto Rico, on June 26, 2023.

Having considered the Motion for Reconsideration presented on June 22, 2023 by the petitioner, Dr. Luis S. Arana Santiago, it is denied.

It was agreed by the Court and certified by the Secretary of the Court of Appeals.

/s/ Lcda. Lilia Oquendo Solís
Secretary of the Court of Appeals
Identification Number RES2023

APPENDIX E
DENIAL OF PETITIONER'S FIRST MOTION FOR RECONSIDERATION, SUPREME COURT OF PUERTO RICO (NOVEMBER 17, 2023)

DENIAL OF PETITIONER'S FIRST MOTION FOR RECONSIDERATION, SUPREME COURT OF PUERTO RICO (NOVEMBER 17, 2023)

IN THE SUPREME COURT OF PUERTO RICO
OFFICE ROOM II

DR. LUIS S. ARANA SANTIAGO,

Petitioner,

v.

DR. LUIS TAPIA MALDONADO, RECTOR OF THE UNIVERSITY OF PUERTO RICO IN UTUADO; DR. JORGE HADDOCK ACEVEDO, PRESIDENT OF UPR; GOVERNING BOARD OF THE UPR,

Respondents.

AC-2023-0057

Before: Martínez TORRES as its President, Judge, Mr. Koltoff CARABALLO, Mr. Filiberti CINTRON, Mr. Colón PÉREZ, Associate Judges.

RESOLUTION

In San Juan, Puerto Rico, on November 17, 2023.

Having examined the first motion for reconsideration presented in this case, it is denied.

It was agreed by the Court and certified by the secretary of the Supreme Court.

/s/ Javier O. Sepúlveda Rodríguez
Secretary of the Supreme Court
[SEAL]

APPENDIX F
DENIAL OF PETITIONER'S SECOND MOTION FOR RECONSIDERATION, SUPREME COURT OF PUERTO RICO (FEBRUARY 2, 2024)

DENIAL OF PETITIONER'S SECOND MOTION FOR RECONSIDERATION, SUPREME COURT OF PUERTO RICO (FEBRUARY 2, 2024)

IN THE SUPREME COURT OF PUERTO RICO
OFFICE ROOM I

DR. LUIS S. ARANA SANTIAGO,

Petitioner,

v.

DR. LUIS TAPIA MALDONADO, RECTOR OF THE UNIVERSITY OF PUERTO RICO IN UTUADO; DR. JORGE HADDOCK ACEVEDO, PRESIDENT OF UPR; GOVERNING BOARD OF THE UPR,

Respondents.

AC-2023-0057

Before: Oronoz RODRÍGUEZ, Presiding Judge, Mrs. Pabón CHARNECO, Associate Judge, Mr. Rivera GARCÍA, Mr. Estrella MARTÍNEZ, Associate Judges.

RESOLUTION

In San Juan, Puerto Rico, on February 2, 2024.

Having considered the *Second reconsideration* presented by the petitioner, it is denied. Adhere to the ruling of this Court.

It was agreed by the Court and certified by the secretary of the Supreme Court.

/s/ Javier O. Sepúlveda Rodríguez
Secretary of the Supreme Court
[SEAL]

APPENDIX G
WRIT OF JUDICIAL REVIEW SUBMITTED TO THE COURT OF APPEALS OF PUERTO RICO (7/14/2021), ERRORS NO. 3 AND 11

WRIT OF JUDICIAL REVIEW SUBMITTED TO THE COURT OF APPEALS OF PUERTO RICO (7/14/2021), ERRORS NO. 3 AND 11

ERROR #3: DR. LUIS TAPIA MALDONADO ERRED BY HAVING INDICATED THAT THE DUE PROCESS OF LAW HAD BEEN COMPLIED WITH

Discussion: The Jurisprudence has identified the minimum requirements for an adjudicative process to comply with the due process of law, namely: (1) adequate notification of the process; (2) trial before an impartial judge; (3) opportunity to be heard; (4) right to cross-examine witnesses and examine evidence presented against; (5) have the assistance of counsel, and (6) that the decision be based on the record. Domínguez Castro v. E.L.A., 178 DPR 1 (2010).

Next, we will see, individually, that several of the basic requirements of due process of law were not met in the administrative proceedings at the UPRU.

Inadequate Notification

In the Administrative Complaint against the Appellant, Dr. Heredia **added** three (3) charges of sexual harassment in the *quid pro quo modality*, namely, the charges for violations of Articles VIII(A)(1), VIII (A)(2) and VIII(B)(2) of Certification 130, without there being a scintilla of evidence in the Report of the informal stage that could be used to prove said charges. Certainly, this constituted **inadequate notification** and, therefore, a clear violation of one of the basic requirements of due process of law. On the other hand, the Administrative Complaint did not

specify **the dates** on which the alleged facts occurred. This also constituted **inadequate notification** of the process, since this deficiency in the notification restricted the Appellant's opportunity to dispute the alleged facts by confronting them with the date on which they supposedly occurred. For example, it could have happened that on the date on which certain facts were alleged to have occurred, an academic recess was declared on the Utuado campus due to the interruption of water or electricity services, as has occurred in multiple occasions in said campus. The lack of dates on the allegations contained in the Administrative Complaint limited the Appellant's opportunity to prepare his defense to refute those allegations. Consequently, Appellant was not adequately notified of the process, as required by due process of law.

Biased Adjudicators

The Appellant participated in an administrative process at the University of Puerto Rico in which there was bias against him on the part of **all** the adjudicators who participated in the process, before and after the Administrative Hearings. The bias against the Appellant began with the officials who carried out the informal stage of the investigation, namely, **Vivian Vélez Vera, Marisol Díaz Ocasio and Dr. María Rodríguez Sierra,** when they **totally excluded** the Appellant from their "investigation" but, even so, they found him guilty of sexual harassment in the hostile environment modality. *See* "*Complaint Report for Sexual Harassment Case Title*

IX" by Vivian Vélez Vera, Marisol Díaz Ocasio and Dr. María Rodríguez Sierra of August 16, 2018[1].

The **bias** and **prejudice** against the Appellant continued with Dr. Luis Tapia Maldonado. **First**, when he, **acting vexatiously** and **contumaciously**, did not want to dismiss the Administrative Complaint after the student decided not to appear at the Hearings. **Second**, when he **unjustifiably restricted** the Appellant's entry to campus since January 18, 2019 and suspended the Appellant of employment, but not salary, "**for security reasons**", since January 15, 2019[2]. **Third**, when he denied the Appellant to teach courses in the summer of 2019[3]. **Fourth**, when he, given his disagreement about the **absolute exoneration** by the Examining Officer of the Appellant regarding the imputed charges, decided to dismiss the Appellant, issuing a *Resolution* in which he **totally distorted** what had occurred during the administrative process before attorney Luis Sevillano Sánchez; particularly, adding a section of "additional facts[4]" to then include as proven facts allegations that were not contained in the Administrative Complaint nor **that**

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[1] *See* A-1-22.

[2] *See* A-518, 525 and 529 (employment suspension and entry restriction). Because Dr. Luis Tapia refused to send a copy of the restricted access letters, the copies emerge from photos of those letters.

[3] All of these actions on the part of the Rector are clear examples of his **prejudice** and **partiality** regarding the guilt of the Appellant. In other words, before the Administrative Hearings were held, the Rector already had "his mind made up."

[4] *See* A-119-121: *Resolution* of Dr. Luis Tapia Maldonado of December 20, 2019, pp. 8-10.

had been alleged by the student herself. Furthermore, in his *Resolution*, Dr. Luis Tapia Maldonado totally ignored the issue of the illicit change of grades to the students, this being a matter material to the controversy, and decided to give credibility to the witnesses David Ureña Negron, Esteban Tellado Zequeira and Jann Romero Santiago, even though the mendacity of these witnesses clearly emerges from the administrative record.

Then, in the appeal phase, the Examining Officer appointed by the President, Atty. Allen Charlotten, and the Examining Officer appointed by the Governing Board, Atty. María Soledad Ramírez Becerra, dedicated themselves to endorsing the *Resolution* of Dr. Luis Tapia Maldonado **without even discussing the errors**[5] pointed out by the Appellant or unfavorably criticizing the acquittal Report of Atty. Luis Sevillano Sánchez. Furthermore, both Atty. Allen Charlotten and Atty. María Soledad Becerra, in order to defend the UPRU's position that the protocol established in Certification 130 had been followed, **completely ignored** the Appellant's "*Motion for Administrative Notice*[6], in which he requested that they take **official notice** of several of the violations of the protocol established in Certification 130 that had occurred during the administrative process at UPRU.

In the case of Atty. Allan Charlotten, he did not even order Atty. Beatriz Torres Torres to express

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[5] *See* A-191-232, which contains the Report of Atty. Allen Charlotten to the President, and A-340-406, which contain the Report of Atty. María Soledad Ramírez Becerra to the Government Board.

[6] *See* A-431-440 and 538-549.

herself on said "*Motion of Administrative Notice*", should she had considered it necessary. In the case of Atty. María Soledad Ramírez Becerra, she alleged that the protocol had been complied with even though Atty. Beatriz Torres Torres had tacitly agreed to the content of the "*Motion for Administrative Notice.*" Consequently, both Atty. Allan Charlotten and Atty. María Soledad Ramírez Becerra, **hid** from the President and the Governing Board, respectively, all the violations that occurred to the protocol established in Certification 130, which clearly follow from the Report of the Examining Officer, Atty. Luis Sevillano Sánchez, and the testimony of Vivian Vélez Vera, who was the official who led the informal stage of the investigation. Said violations of the protocol established in Certification 130 also follows from the documents, or lack thereof, in the administrative record.

Cross-Examine Two Important Witnesses Was Curtailed

It follows from the recordings of the Administrative Hearings that the Appellant, acting through his legal representative, Atty. Carlos Rivera Turner, did not have the opportunity to **cross-examine** witnesses Vivian Vélez Vera and Marisol Díaz Ocasio about the illicit change of grades to the students. This restricted in an important manner the Appellant's right to cross-examine these witnesses on material aspects of the controversy, because the case's theory of the Appellant has been that the Administrative Complaint arose as a consequence of the dissatisfaction of Dr. Heredia and Vivian Vélez Vera in the face of the students' failure. Furthermore, it follows from the Report of the Preliminary Conference between Lawyers that the case's theory of the Appellant, and part of the controversy

thereof, was whether the motives for making the allegations against the Appellant were related to the students' failure in the course. We quote:

> **Case Theory of the Appellant**: "The defendant alleges that the present formulation of charges is in retaliation for the fact that none of the students passed the course, because he did not give in to pressures from the students or the administration, in particular the dean Vivian Vélez Vera". "*Report on Preliminary Conference Between Lawyers*", *Part III: Theories, p. 7. See A-49.*
>
> **Part of the controversy of the case**: "If the allegations are true, or if they have been made for other reasons, such as, for example, that the complainant, as well as the other witnesses who took the course, have created the allegations because they did not pass the course". *Report on Preliminary Conference Between Lawyers, Part V: Controversy, #5, p. 15. See A-57, #5.*

It follows from the two (2) previous quotes that that part of the cross-examination of the witnesses Vivian Vélez Vera and Marisol Díaz Ocasio that had to do with the illicit change of grades to the students, which successfully was challenged by the Atty. Beatriz Torres Torres, **was material to the controversy** and **the Appellant's theory of the case**; likewise it would also have helped to disclose the **real motives** of Vivian Vélez Vera in initiating and promoting the Administrative Complaint against the Appellant, calling into question her credibility regarding her real motives for having initiated and continued with the

"investigation" of the student's complaint that led to the Appellant's dismissal.

On the other hand, having restricted the Appellant's opportunity to cross-examine the witnesses Vivian Vélez Vera and Marisol Díaz Ocasio constituted a violation of the LPAU, which in its pertinent part states that:

> "The official presiding over the hearing within a framework of relative informality will offer all parties the necessary extension for **full disclosure of all the facts and issues under discussion**, the opportunity to respond, present evidence and argue, **conduct cross-examination and submit evidence in rebuttal**, except as restricted or limited by provisions at the conference prior to the hearing. *Uniform Administrative Procedure Act of the Government of Puerto Rico (LPAU)*, Law No. 38 of June 30, 2017, as amended, Section 3.13(b), 3 LPRA. Sec. 9652(b). (*Emphasis ours.*)

It is pertinent to mention that Atty. Carlo Rivera Turner made a legal argument asking the examining officer to allow witnesses Vivian Vélez Vera and Marisol Díaz Ocasio to testify regarding the illicit change of grades to students, however, said argument **was overruled**. This resulted in Appellant not being allowed to present that material testimonial evidence and, consequently, that action constituted an additional violation of **due process of law**, distinct from his right to cross-examine witnesses. Related to this, the Honorable Supreme Court has stated that:

> "In the administrative adjudicative process, due process of law gives the right to an aggrieved party **to present all the evidence necessary to support its claim**, as well as **to refute orally or in writing the evidence submitted against it**. López Vives v. Policía de P.R., 118 DPR 219 (1987). *See also, Magriz Rodríguez v. Empresas Nativas Inc.*, 143 DPR 63 (1997). (*Emphasis ours.*)

Clearly, since Atty. Lcdo. Carlo Rivera Turner legal argument regarding Vivian Vélez Vera and Marisol Díaz Ocasio being allowed to testify about the illicit change of grades to the students had not been accepted, the Appellant was not allowed to present that material evidence to the controversy that supported his theory of the case. Consequently, not accepting the legal argument of Atty. Carlo Rivera Turner to allow the testimony of Vivian Vélez Vera and Marisol Díaz Ocasio regarding the illicit change of grades to the students, constituted one more violation of the due process of law that the Appellant was entitled to.

To recapitulate, by not allowing the witnesses Marisol Díaz Ocasio and Vivian Vélez Vera to be questioned about the illicit change of grades to the students of the course Mate 3012, M23, several rights recognized in section 3.13(b) of the LPAU, which had to be guaranteed by the Examining Officer were violated. Adaline Torres Santiago v. Dept. De Justicia, 2011 TSPR 78. Clearly, said rights recognized in the LPAU arise due to the imperative of **due process of law.**

The Process was not Fair and Equitable

At the outset, we make the observation that, **structurally**, the process could not have been equitable, since the Appellant was circumstantially at a disadvantage. This is so because the Appellant was in the classroom accompanied by eight (8) students who were failing in the course. For this reason, the student, or the Rector, who conveniently, in a **totally biased manner**, identified himself with the student's position, had potential witnesses to try to prove any allegation against the Appellant, however, the Appellant did not have any witnesses who had direct knowledge of what was alleged against him. For this reason, the process in Utuado, **structurally, was not an equitable one**.

On the other hand, it emerges from the administrative record that the Appellant **was denied** participation in the informal stage of the investigation, which constitutes additional proof that the administrative process at UPRU was not **fair** and **equitable**, this being be [sic] the most basic requirement of due process of law to which the Appellant was entitled to **even in the informal stage** of the investigation. Pertinently, the Supreme Court has stated that:

> "In the administrative sphere, the process required will depend on the circumstances, but it must always be characterized by being **fair, and impartial**". Picorelli López v. Dept. De Hacienda, 179 DPR 720, 736 (2010); Almonte et al. v. Brito, 156 DPR 475, 481 (2002) (*Emphasis ours.*)

The Rector's Decision Was Not Based on the Record

In his *Resolution*, Dr. Luis Tapia Maldonado included a section entitled: "*Additional Determinations of Proven Facts, according to the evidence that arises from the administrative record and that presented and admitted during the Administrative Hearings" ("additional facts")*[7]. In said section the Rector added a series of facts **that were not alleged** in the Administrative Complaint and adjudicated them as proven. Because the "proven facts" contain allegations by the students that were not contained in the Administrative Complaint, the Appellant did not have the opportunity to adequately prepare to confront or refute those allegations by the students, since they appeared **unexpectedly** in the Administrative Hearings. Therefore, having adjudicated those allegations as proven facts, without the Appellant having the **opportunity to adequately prepare** to refute them, constituted another violation of **due process of law**.

Related to this, the Supreme Court has stated that when the administrative determination is based on **evidence that was not in the record**, without granting the parties the opportunity to examine and refute it, its determination cannot prevail. López y otros v. Asoc. de Taxis de Cayey, 142 DPR 109 (1996), 142 DPR 109 (1996); Escudero v. Junta Salario Mínimo, 66 DPR 600, 602 (1946); Corporación Azucarera v. Junta Azucarera, 77 DPR 397, 410 - 411 (1954). (*Emphasis ours.*)

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[7] See A-119-121.

It is important to mention that the students' testimony related to these "additional facts" **was objected timely** and **consistently** by Atty. Carlo Rivera Turner. On the other hand, the Examining Officer granted the parties a period of fifteen (15) days after the end of the Administrative Hearings to submit proposals of proven facts, if they considered it pertinent. We are not aware that UPRU submitted any proposal of proven facts for the consideration of the Examining Officer after having finished the Administrative Hearings in which it included the "additional facts" that were included in the Rector's *Resolution*. Anyway, if said proposal of additional facts was submitted by the UPRU for the consideration of the Examining Officer, it had to have been rejected because the facts contained in the "additional facts" section in the Rector's *Resolution* **do not appear as proven facts in the Report of the Examining Officer**.

It is known that the Examining Officer is in charge of forming the administrative record. Comisionado de Seguros de P.R. v. Real Legacy Assurance Company, 2010 TSPR 142, 179 DPR__. In particular, it is the Examining Officer, who is responsible for assessing the testimonial evidence and **adjudicating the facts in controversy**, according to the evidence before his or her consideration. Although it is true that the Rector does not have to accept the recommendation of the Examining Officer as to how to dispose of the case, **he is obliged to base his decision on the record formed by the Examining Officer**. Regarding this, the Supreme Court, referring to the figure of the Examining Officer, has stated that:

> "His position requires him to compile, in a comprehensive manner, the evidence presented in the procedures, that is, he is responsible for the formation of the administrative record . . . **on which the adjudicator will rely to make the final decision.**" Com de Seg. de P.R. v. Real Legacy Assurance Co., *supra.* (*Emphasis ours.*)

It emerges from the previous quote that, according to the law at the time the Rector issued his *Resolution*, he had to base his decision on the facts that the Examining Official deemed as proven or, at least, should have alleged and demonstrated, that the Examining Officer acted with partiality, prejudice, passion, or that he had made a manifest error when evaluating the testimonial evidence related to those facts. The only "additional fact" that we know of, which the Rector alleged manifest error on the part of the Examining Officer, was regarding the students' allegation that they felt **uncomfortable**[8] in the classroom due to the alleged conduct of the Appellant. Now, the explanation offered by the Rector for having differed from the Examining Officer on this aspect is completely unsatisfactory. Let's see what the Rector alleged.

> "When analyzing the testimony given by the students during the hearings together with the evidence in the record, we see no reason

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[8] Given the failure to appear at the Hearings of the student Génesis Vélez Feliciano, the Rector tries to suggest that there was an "uncomfortable" atmosphere in the classroom. However, these suggestions or allegations by the Rector entail **fatal errors in law and violations of due process of law**, because according to the Administrative Complaint the claimants were not the students, but rather the student Génesis Vélez Feliciano.

> why we should not give credibility to the aspect of discomfort perceived by the students. The fact that the students presented the complaints almost at the end of the academic semester and that they were failing the course, contrary to the reasoning of the Examining Officer, does not lead us to conclude that it was the true reason for the students to complain about the behavior that they perceived as uncomfortable on the part of the Professor. The time or moment in which a complaint is filed for conduct of sexual harassment or constituting immoral behavior is not a determining element that should be taken into consideration to detract from the credibility of what is alleged by the students and reiterated through their testimonies. Therefore, the basis that the Examining Officer used to determine to diminish credibility from the students' testimony regarding the aspect of their perceived discomfort, in its application is incorrect. *Resolution, p. 30. See A-141-142.*

That quote from the Rector requires some comments. On May 24, 2018, the students did not go to complain about sexual harassment or immoral conduct by the Appellant, but rather they went to complain **because they were failing in the course**[9]. The following is taken, respectively, from the Letter of May 24, 2018, which the students addressed to Vivian Vélez Vera, and from the Minutes of the meeting of

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[9] *See* A-506.

May 24, 2018 of the students with Vivian Vélez Vera and Dr. María Rodríguez Sierra:

> "We are very concerned about this situation because there are graduation candidates in the group and colleagues who need this class as a requirement to transfer to another campus. We hope that the situation will be worked on as soon as possible and the necessary actions will be taken." *See A-6.*
>
> "The students reiterate that their interest is not in withdrawing. They are aware of the withdrawal date. However, they claim that some type of alternative can be achieved from Dr. Arana so that they do not have to fail. There is a graduation candidate in the course." *See A-8.*

It is clearly observed that the alleged complaint of sexual harassment or immoral behavior did not come from the students, but rather came from **Vivian Vélez Vera**, once she perceived the potential that the students' academic complaints had for these purposes.

After this clarification, if we went back to the previous quote from the Rector, we would see that his reasoning is one of those that require one to believe "what no one else would believe."

Therefore, **it has become clear** that when Atty. Luis Sevillano Sánchez did not believe the students who said they felt **uncomfortable**, he was not moved by passion, prejudice, partiality or that he made a manifest error, just as the Rector did, who, in turn, was moved by **passion, partiality** and **prejudice** against the Appellant.

Because the rector added an "additional facts" section in his *Resolution* that was not contained in the Examining Officer's Report, the facts on which the Examining Officer based his recommendation to the rector **were not the same** than those on which the Rector based his *Resolution*. Consequently, this action by the Rector constituted a violation of due process of law and an abuse of discretion, since he **did not** base his decision **in the case record**, which was the one given to him by the Examining Officer.

We have seen that the inclusion of some "additional facts" in the *Resolution* caused a series of violations of **due process of law** by the Rector. Because the Rector based his decision fundamentally on the "additional facts," which he deemed as proven, there is no doubt that his actions were irrational, **unreasonable, arbitrary, intentional**, and contrary to the rule of law at the time he issued his *Resolution*. In conclusion, the violations of **the basic requirements** of **due process of law** that occurred in the administrative process at UPRU were alarmingly many.

ERROR #11: DR. LUIS TAPIA MALDONADO ERRED BY HAVING DISMISSED THE PROMOVENT WITHOUT HAVING THE REQUIRED QUANTUM OF EVIDENCE

Discussion: We incorporate by reference the evidence and discussion of **ERROR #28** of our Appeal brief to the Governing Board of the University of Puerto Rico[10].

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[10] *See* A-278.

The *Quantum* of evidence required for the dismissal of a permanent public employee is that of **clear, robust and convincing evidence**. Because the *Resolution* of Dr. Luis Tapia Maldonado to have dismissed the Appellant **rests fundamentally** in the testimony of the students David Ureña Negrón, Esteban Tellado Zequeira and Jann Romero Santiago, who are **totally impeachable**, as we have shown, the UPRU did not have the required *Quantum* of evidence to be able to have dismissed the Appellant. If **we subtract** from this the "**additional facts**" that came from the testimony of these students and the non-appearance of the student Génesis Vélez Feliciano at the hearings, the evidence that the UPRU had to have proven its case against the Appellant is reduced to "*nil*."

In practical terms, the mere non-appearance of the student Génesis Vélez Feliciano at the Administrative Hearings, together with the determination of the Examining Officer who declared as hearsay those documents that contained expressions of her, **without further ado**, reduced the *Quantum* of evidence of the UPRU to zero (0) in the present administrative case, which could not be altered due to the contestability of the students that UPRU presented as witnesses.

On the other hand, in the administrative record there is sufficient evidence to demonstrate the Appellant's theory of the case, notwithstanding, it was the UPRU that had to prove its case. Of course, the fact that the evidence in the record is sufficient to demonstrate the Appellant's theory of the case serves as a counterweight to the possibility that the UPRU could have proven its case, this apart from the insufficient evidence it had to prove it, as we have already explained.

APPENDIX H
MOTION FOR RECONSIDERATION,
COURT OF APPEALS OF PUERTO RICO
(JUNE 22, 2023)

MOTION FOR RECONSIDERATION, COURT OF APPEALS OF PUERTO RICO (JUNE 22, 2023)

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
JUDICIAL REGION OF SAN JUAN

DR. LUIS S. ARANA SANTIAGO,

Appellant,

v.

DR. LUIS TAPIA MALDONADO, RECTOR OF UPR-UTUADO; DR. JORGE HADDOCK ACEVEDO, UPR PRESIDENT; UPR GOVERNING BOARD,

Appellees.

Case No. KLRA202100375

From the University of Puerto Rico
Case JG 20-08
Judicial Review

MOTION FOR RECONSIDERATION

Dr. Luis S. Arana Santiago, acting pro se, very respectfully states, alleges and requests:

The present writ is to request this Court to **address very important** issues in the present case that were not addressed in the Judgment thereof,

notified and filed in the record on June 9, 2023, and to **review** other matters that were incompletely and erroneously addressed and, consequently, to **reconsider** its determination to affirm the decision of the University of Puerto Rico in Utuado (UPRU) to having dismissed the Appellant on December 23, 2019. Below we list and discuss the matters we request to be addressed.

First issue: It is requested that attention be paid to and **recorded** in the Judgment, which of the conducts alleged in the *Administrative Complaint* are of a sexual nature, either according to the categories established in Law No. 3 of January 4, 1998, as amended, known as "*Law to Prohibit Sexual Harassment in Educational Institutions of Puerto Rico*" or according to the categories established by the Supreme Court of Puerto Rico in its jurisprudence, or according to the categories that the Federal Department of Education has established for the purposes of applying the Title IX Law.

Comment: This matter is of utmost importance in the present case, since UPRU's complaint against the Appellant is for hostile environment **sexual harassment** to the student Génesis Vélez Feliciano; **not** for having engaged in "violent conduct" as this forum concludes in its Sentence.

Second Issue: After this forum has identified the sexual conducts contained in the *Administrative Complaint*, if any, according to the categories established by the authorities mentioned in the **First Issue**, we request to indicate which of them **are severe**, if any.

Third Issue: It is requested to be reviewed and corrected that part of the Judgment in which this forum comments that during the Informal investigative process the Appellant was given the opportunity to participate in the process; that he was notified of the allegations and the complaint filed by the student Génesis Vélez Feliciano, and that he was allowed to express himself and defend himself, both verbally and in writing. *Sentence, p.20.*

Comment: To reach these conclusions, this forum refers to the testimony of Vivian Vélez Vera, Marisol Díaz Ocasio and Professor Torres Bauzá.

Discussion: As a pressing matter, it is worth clarifying that with such actions this forum undertook the task of evaluating the oral evidence, which was the exclusive function of the Examining Officer, whose criteria deserve deference. On the other hand, from the transcript of the hearing on October 31, 2019, it is inferred that the witness Vivian Vélez Vera did not deserve any credibility from the Examining Officer, so relying on the testimony of Vivian Vélez Vera to prove any fact in this case would turn out to be totally misguided. By the way, in our writ for judicial review we took on the task of **demonstrating** - not alleging - the intense and patent **mendacity** of Vivián Vélez Vera in the administrative process. See our "*Supplementary Allegation*". Regarding the testimony of Professor Torres Bauzá, this forum stated that the professor warned the Appellant about his right to present his defenses regarding the complaint filed. This argument is temporally impossible. It follows from the administrative record that **June 4, 2018** was the date on which Professor Torres Bauzá met with the Appellant, while Génesis Vélez Feliciano filed her

Title IX complaint on **June 5, 2018**. This forum also indicated that the Appellant met with Dr. José Heredia and that the latter reiterated to the Appellant that he was the subject of an investigation of a complaint filed by the student Vélez Feliciano. *Sentence, p. 4.* To conclude in this way, this forum refers to the testimony of Marisol Díaz Ocasio, an official who **lied** to the students in relation to the fact that the illicit change of grades was allowed by the "*University Regulations*", and who did not deserve credibility to the Examining Officer. Therefore, it is forced to conclude that this forum **erred** with respect to what was expressed in the **Third Issue**, since it used as a basis for it the expressions of two (2) witnesses who did not **deserve credibility to the Examining Officer**, and the expressions of a witness who met with the Appellant only once, before the student "complained".

Fourth Issue: We request that all violations by the UPRU of its own regulations be confirmed and recorded in the Judgment, as arises from our writ for judicial review, our "*Supplementary Allegation*" and the Report of the Examining Officer, with particular attention to the violations of articles IX-C and XI-F that prohibit the participation of Vivian Vélez Vera in the process.

Fifth Issue: It is requested that this court address, confirm and record in the Judgment the **non-compliance** in UPRU's administrative process with Article 13.3(b) of Law No. 138-2012, "*Administrative Procedure Act of the government of Puerto Rico*", as amended (LPAU), in the administrative process at the UPRU.

Discussion: As we explained in our writ for review and in our "*Supplementary Allegation*", the Examining Officer did not allow the legal representative of the Appellant, Atty. Carlo Rivera Turner, to **cross-examine** the witnesses Vivian Vélez Vera and Marisol Díaz Ocasio **about the illicit change of grades** of the students of the Mate 3012, M25 course. This follows immediately from the transcript of the hearing of October 31, 2019 and November 1, 2019.

Sixth Issue: It is requested that the Sentence be reconsidered in light of the criterion of **clear, robust and convincing evidence**, which is the appropriate criterion in the face of the threat of dismissal of a public employee, as has been established by the Supreme Court.

Discussion: We request that the following facts be considered that support our position that the UPRU does not have **clear, robust and convincing evidence** in the present case.

1) Never before the deadline to withdraw [from the course] did the students complain to UPRU administrators about irregularities in the classroom. 2) At the time they complained about the alleged irregularities in the classroom, they were all failing and their failure in the Mate 3012, M25 course **was imminent**. 3) When they complained on the last day to withdraw from the course, they did not allege the specific conducts that they had alleged in the administrative hearings; particularly they did not mention that the Appellant approached the student Génesis Vélez Feliciano. To verify this fact, it is enough to examine the letter of **May 24, 2018** that the students issued to Vivian Vélez Vera and the **Minutes** of the meeting they had with Vivian Vélez Vera and Dr.

María Rodríguez Sierra on **May 24, 2018**. This is enough to impugn their credibility for having been inconsistent. 4) It is an incontrovertible fact that the students reported the conducts they declared in the administrative hearings only after the administrators changed their final grade from **F to C**. This entails a double aggravation for the UPRU. First, according to the rules of evidence, said statements are inconsistent (by omission), also it makes said witnesses interested parties. 5) Despite having "smart" phones, and having declared that the behaviors occurred "**basically in all class meetings", they never** took photos or recorded videos or audios. At this juncture, the words of Judge Raúl Serrano Geyls could not be more appropriate:

"We judges must not, after all, be so innocent as to believe statements that no one else would believe." Pueblo v. Luciano Arroyo, 83 DPR 573, 582 (1961);

6) The student Génesis Vélez Feliciano did not complain *motu proprio* against the Appellant but rather she was induced and guided by Vivian Vélez Vera, **who was not authorized to participate in the process**, and who was identified by the students under oath as participating in the process of illicitly changing their grades. In addition, it is requested that what it was resolved in the following judicial cases be considered in the analysis of whether there was **clear, robust and convincing evidence.**

First case: In the case OEG v. Manuel Martínez Giraud, 2022 TSPR 93, the Supreme Court expressed:

> "Therefore, it is forced to conclude that when the ethical behavior of a public official is questioned, even if it is the simple appearance of bias or dishonesty, the charge

> must be established by clear, robust and convincing evidence **that, in turn, overcomes and rules out all approaches based on conjectures and third-party accounts**." (*Emphasis ours.*)

These expressions of the Supreme Court, when applied to the present case, leave no doubt that the testimonies in the record **do not** reach a *quantum* of **clear, robust and convincing** evidence required for the factual issues thereof to be proven; since these constitute **accounts from third parties, who are also interested** and **inconsistent** witnesses.

Second case: In the case OEG v. Lorna Soto, KLRA201700578, this Court cancelled a fine against Ms. Lorna Soto Villanueva because several of the witnesses in that case had political ties to this person's political opponent. We quote:

> "Similarly, from the testimonial evidence it can be deduced that the majority of the witnesses had ties to the appellant's opponent in the 2016 primaries. **A fact that can reveal bias and motivation in their testimonies. Which does not allow this evidence to be appreciated as robust and convincing**." Page 20. (*Emphasis ours.*)

That case reached the Supreme Court, case 2019 TSPR 122, and the Supreme Court did not alter the Court of Appeals' determination.

Third case: On the other hand, in the case Ex. Sgto. Ángel D. Hernández Pérez v. Policía de P.R, KLRA201601162, this Court stated:

> "In light of the above, we understand that, as the appellant pointed out in his judicial review brief, the agency erred by basing its determination on the testimony of the NIE investigator **when he did not have the opportunity to cross-examine the alleged owner of the apartment located in Torrimar Plaza.**[. . .].We cannot ignore that the quantum of evidence required when it comes to the imposition of disciplinary measures that imply the loss or suspension of employment and salary of a public official or employee, is more rigorous." (*Emphasis ours.*)

It follows from the administrative record that the Appellant did not have the opportunity to **cross-examine** the complainant, which is compatible with what had occurred in the case Ex. Sgto. Ángel D. Hernández Pérez v. Policía de P.R., *supra.* Therefore, if in that judicial case there was no **clear, robust and convincing** evidence to prove the alleged facts because an essential witness could not be cross-examined, then, in the same way there cannot be any in the present case.

Seventh Issue: It is requested that an **objective** and **subjective** analysis be made in accordance with the ruling by the Supreme Court in the normative case UPR-Aguadilla v. Lorenzo Hernández, 184 DPR 1001 (2012), 2012 TSPR 57.

Discussion: In said case the Supreme Court determined that in cases of allegations of hostile environment sexual harassment, as a general rule, an **objective and subjective analysis must be carried out.** In that case the Supreme Court stated:

> **"However, what constitutes sexual conduct under this modality cannot be evaluated exclusively based on the perception of one of the parties involved."** (*Emphasis ours.*)

In the administrative case under consideration, the evidence in the record shows that the complaining student did not go to testify at the administrative hearings and, consequently, the Examining Officer declared as **hearsay all the documents that contained expressions made by the student**. Given these circumstances, it is concluded that the administrative record does not contain substantive evidence consisting of verbal or written expressions of the student Génesis Vélez Feliciano. This means that, in accordance with the applicable law, as expressed by the Supreme Court in the previous quote, in the present case it **cannot even be evaluated** whether or not a hostile environment sexual harassment had occurred, due to the absence of one party. The Examining Officer concluded that there was **no** sexual harassment for multiple reasons, including that the UPRU could not prove the subjective and the objective aspect in the present case. *See the Report of the Examining Officer, Atty. Luis Sevillano Sánchez, page. 41.* Due to its importance in the present case, we are urgent to emphasize that because the documents containing expressions of Génesis Vélez Feliciano were declared hearsay evidence, the content of said documents **cannot be used as substantive evidence to establish as proven any fact in the present case**. Despite this, this Court, **grossly abusing its discretion**, used the student's expressions contained in said documents to establish countless facts as

proven. For example, in the Judgment, the following quote was taken from the Minutes of the meeting of **May 24, 2018**, in which Vivian Vélez Vera, Dr. María Rodríguez Sierra and Génesis Vélez Feliciano participated:

> "That same day, Dean Vivian Vélez Vera and Dean Rodríguez Sierra met in private with the student Génesis Vélez Feliciano. She spoke about the inappropriate conduct of the dollars[sic] of her person. In particular, she expressed that Dr. **Arana Santiago** frequently commented to her that she seemed to like strong men and expensive cars; and she seemed to like parties. She stated that, on one occasion, Dr. Arana Santiago brought his face closer to hers. She added that [my error] constantly expressed that if she believed that her boyfriend could solve the mathematical problems in his mind. Ms. Vélez Feliciano highlighted that the gestures and expressions of Dr. Arana Santiago were unwanted. At the same time, she stated that she felt afraid to personally express to Dr. **Arana Santiago** her discomfort with said attitudes towards her person. She exteriorarized interest in filing a formal complaint. *Sentence, p. 3.*

We ask the Court at this stage of reconsideration not to consider the expressions of the complaining student contained in the previous quote as substantive evidence, since they constitute **hearsay evidence**. Let us analyze the content of the following quote taken from the Judgment:

> However, after a thorough examination of the transcript of the oral evidence (TPO), we are of the opinion that the testimonies given by the three (3) students support the allegations contained in said document (that is, the affidavit of Génesis Vélez Feliciano). Therefore, it is reasonably understood that the student Vélez Feliciano was the victim of unwanted, suggestive verbal and physical approaches in the classroom and during the course by Dr. **Arana Santiago**. Also, that, at all times, said conduct was rejected by the student Vélez Feliciano, to the extent of having to abandon the course." *Sentence, page 21. (Clarification contained in the internal parenthesis supplied.)*

It is clearly observed that this Court established factual conclusions in its Judgment based on testimonies given by three (3) students presented by the UPRU as witnesses, **grossly abusing its discretion, violating the due process of law to the Appellant** and unjustifiably invading the function that corresponded **exclusively** to the Examining Officer of evaluating the testimonial evidence and establishing the facts proven in the administrative process. **This matter is extremely alarming and worrying and needs to be urgently corrected.**

Eighth Issue: It is requested that the determination that **due process of law** was complied with in the process before the UPRU be corrected.

Discussion: The essential requirement of due process of law is that the process has to be **fair** and **equitable**, but it contains other elements, such as the

compliance of administrative agencies with their own regulations and with the LPAU.

There is no doubt that the UPRU did not comply with the regulations of the University of Puerto Rico, especially with the process established in Certification 130, as it follows from the Report of the Examining Officer, the administrative record and the transcript of the hearings of 31 October 2019 and November 1, 2019. See our "*Supplementary Allegation*". These violations, in turn, constitute violations of due process of law.

As it is known, cross-examination is *the most powerful tool to find the truth in an adjudicative process.* It follows from the transcript of the hearings of October 31, 2019 and November 1, 2019 that we were not allowed to cross-examine the witnesses Vivian Vélez Vera and Marisol Díaz Ocasio about the illicit change of grades to the students of the Mate 3012, M25 course. Consequently, this constituted a violation of Section 3.13(b) of the LPAU and, with such actions, our right to defend ourselves and present evidence that favored us was restricted. The Supreme Court has stated that for the confrontation to have concretion, **due process of law** requires that the means to test [the evidence] be made available to the accused **to challenge the witnesses and attack their credibility**, as well as any similar resources **aimed at eradicating the falsehood from the trial.** Pueblo v. Daniel Cruz Rosario, 2020 TSPR 90 (citing Pueblo v. Guerrillero López, 179 DPR 950, 958 (2010)) (*Emphasis ours.*) It is important to keep in mind that "[i]n every adjudicative process, whether judicial or administrative in nature, or of any kind, **the purpose of finding the truth and doing justice to the**

parties must prevail." J.R.T. v. Aut. de Comunicaciones, 110 DPR 879, 884 (1981) (*Emphasis ours.*) To these ends, the Supreme Court has expressed that the right to cross-examine witnesses is essential for the holding of a fair and impartial trial for this is the mechanism which the defense relies on to discover the truth. Pueblo v. Guerrillero López, *supra.*

At the federal level, the United States Supreme Court has expressed that:

> "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Goldberg v. Kelly, 397 U.S. 254, 269 (1970). "When the evidence consist or the testimony of individuals, who might be **perjurors** or **persons motivated by malice, vindictiveness,** . . . ., the individual's right to show that it is untrue depends on the right of confrontation and cross-examination". Green v. McElroy, 360 U.S. 474 (1959); Goldberg v. Kelly, 397 U.S. 254, 269 (1970 (*Our emphasis.*)

On its part, at the University of Puerto Rico the right to cross-examine witnesses is guaranteed by Article XIII-B of Certification 130; by Article IX-e of Certification No. 44 (1984-85) of the *Council of Higher Education, Regulation No. 8861* ("During the administrative hearing, each party will have the right . . . [to] cross-examine the witnesses presented by the opposing party"

—https://www.uprm.edu/asesorialegal/wp-content//uploads/sites/152/2018/05/cert._44.pdf, and by Section 35.1.6 of the *General Regulations of the University of*

Puerto Rico (the right to confront the evidence is guaranteed.)

We recapitulate: By having restricted our opportunity to cross-examine the witnesses Vivian Vélez Vera and Marisol Díaz Ocasio, **due process of law** was directly violated, and violations of Section 3.13(b) of the LPAU and the University regulations mentioned above had been configured, which in turn constitutes violations of **due process of law** as well. On the other hand, by not having allowed Vivian Vélez Vera and Marisol Díaz Ocasio be cross-examined, we were restricted from our right to attack their credibility, to defend ourselves adequately and that the truth had been seek, which is the ultimate goal of any adjudicative process, whether judicial or administrative, in order to achieve justice. JRT v. Comm Aut., 110 DPR 879, 884 (1981). The preceding circumstances leave no doubt that the process before the UPRU **was not fair or equitable**, which is why it violated **due process of law**.

Ninth Issue: It is requested that all evidence that **undermines** the administrative determination be considered and addressed as required in any judicial review process. In particular, to address our tenth statement of error that deals with the illicit change of grades to students of the Mate 3012, M25 course, **which was completely unattended** by this forum. Remember that the aforementioned illicit change of grades represents a conflict of evidence for the Appellees, and that their determination cannot be *pro forma*. *See* Assoc. Ins. Agencies, Inc., v. Com. Seg. P.R, 144 DPR 425, 437 (1997).

Applicable Law

> "With regard to factual determinations by administrative agencies, section 4.5 of the LPAU includes the traditional rule of substantial evidence [. . .]. This rule **imposes on us the obligation** to examine the entirety of the evidence submitted to the agency as recorded in the adjudicative procedure record. **The evidence must be considered in its entirety**, including both that which supports the administrative decision **and also that which undermines the weight that the agency conferred on it**." Assoc. Ins. Agencies, Inc., v. Com. Seg. P.R., *supra*; Torres Rivera v. Policía de P.R., 196 D.P.R. 606 (2016). (*Our emphasis.*)

Discussion: There is no doubt that in this judicial review process this Court completely ignored the evidence that we presented that **undermines** the administrative determination, therefore **failing in its duty in this process**. From the Judgment of the case it is easy to see that this Court dedicated its efforts, **with energy and enthusiasm**, to trying to **ratify, instead of reviewing**, the administrative determination. This despite the fact that the Appellees, **unlike us, did not even present a supplementary argument to facilitate that task**!

In accordance with the applicable law, we request that all the evidence that undermines the administrative determination in this case and the applicable law that opposes it be considered. Namely, we request that it be considered and/or established: 1) The illicit change of grades to the students of the Mate 3012, M25 course, as it follows from the

testimonies **under oath** of the students in the administrative hearings; 2) The multiple violations of the University regulations that had occurred in the administrative process, as we have specifically identified in our documents, and as it follows from the Examining Officer's report; 3) The violations of Section 3.13(b) of the LPAU; 4) The **illegal** participation of Vivian Vélez Vera in the *informal stage* of the "investigation" of the *Administrative Complaint*, which constituted violations of Articles IX-C and IX-F of the Certification 130, and which **caused harm to the Appellant**[1]; 5) The declaration of Professor Torres Bauzá, in regard that he believed that the students' actions were motivated by their desire to have the grade they had in the course changed, since at that time all of them were failing in it[2]; 6) That Génesis Vélez Feliciano did not *motu proprio* presented a complaint of sexual harassment against the Appellant, but rather said complaint came about from the **invitation** to a private meeting with Vivian Vélez Vera and Dr. María Rodríguez Sierra; 7) That Génesis Vélez Feliciano's Title IX complaint happened after these officials offered to change her final course grade from **F to C**; 8) That never before the administrative hearings had the students testified about the specific conducts they alleged in the administrative hearings. *This follows from the letter that the students delivered to Vivian Vélez Vera on May 24, 2018 and from the Minutes of Vivian Vélez Vera's meeting with the students on May*

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[1] *See*, **in particular**, the Appellees' "*Opposition Allegation*" *of April 18, 2022, Appendix*, premises #1 and #4, p. 10.

[2] *See* Report of the Examining Officer and/or the Transcript of the hearing of November 1, 2019;

24, 2018; 9) That in the meeting on May 24, 2018 the Appellant had with Vivian Vélez Vera and Dr. María Rodríguez Sierra, the Appellant was not informed of any investigation that involved him, and that the name of Génesis Vélez Feliciano was not even mentioned in that meeting, as it follows from the Minutes of said meeting; 10) That Marisol Díaz Ocasio **lied** to the students by indicating that the illicit change of grades was allowed by the "*Regulation*" of the University[3]; 11) That the Report of the Examining Officer be considered and given deference as required by the current law. 12) That the criterion of **clear, robust and convincing** evidence be applied to this case, as required by the current law. 13) That the objective-subjective analysis be carried out as required in this case. 14) That it be established as a proven fact that the students' purpose for having gone to meet with Vivián Vélez Vera was because they had failed in the Mate 3012, M25 course, and they were looking for "alternatives" so as not to fail [in the course]; 15) That the students affirmed under oath that Vivian Vélez Vera and Marisol Díaz Ocasio participated in the illicit change of their grades; 16) That it be established as a proven fact that the student Génesis Vélez Feliciano **did not express in her sworn statement that she felt sexually harassed**. *See* Indulac v. Central Gen. De Trabajadores, 2021 TSPR 78.

Tenth Issue: This Court is requested to **correct the serious error** of having affirmed the determination of Dr. Luis Tapia Maldonado to have dismissed the Appellant for **violent conduct**.

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[3] *See* our "*Supplementary Brief*".

Discussion: As a pressing matter we clarify that **none of the charges** contained in the *Administrative Complaint* **have to do with accusations of violent conduct** by the Appellant. The *Administrative Complaint* is for hostile environment sexual harassment to the student **Génesis Vélez Feliciano**, which **is based on some alleged facts** directed at said student. Therefore, we ask this Court to direct its efforts to review the administrative determination as to whether hostile environment **sexual harassment** occurred to the student Génesis Vélez Feliciano, who is the **only** claimant in this case, and **not to distort said entrustments towards issues that are not part of the Administrative Complaint**, nor include claimants or situations that are not part of it. And in said review process, that it **duly attend** to the constitutional protections of **due process of law**, of the **LPAU**, and of the **regulations of the University of Puerto Rico that assisted the Appellant** and that were violated in the administrative process before the UPRU, as we have identified them in detail in our documents, **providing to this forum the exact reference of the evidence in the administrative record that serves to verify it**.

WHERETOFORE, it is requested that the Judgment of the epigraph case **be reconsidered** and, consequently, that the determination of the administrative forum regarding the **illegal dismissal** of the Appellant be reversed, and that the Appellees be ordered to pay the Appellant the salaries no longer accrued, benefits no longer received, and attorney's and transcription of administrative hearings cost, as applicable by law.

CERTIFICATION

The Appellant, Dr. Luis S. Arana Santiago, certifies that he has sent a copy of this Motion for Reconsideration by certified mail and email to the legal representation of the Appellees as described below:

/s/ Dr. Luis S. Arana Santiago
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APPENDIX I
PETITIONER'S WRIT OF APPEAL SUBMITTED TO THE SUPREME COURT OF PUERTO RICO (7/20/2023), ERRORS NO. 2, 6 AND 8

PETITIONER'S WRIT OF APPEAL SUBMITTED TO THE SUPREME COURT OF PUERTO RICO (7/20/2023), ERRORS NO. 2, 6 AND 8

V. Conflicts of Previous Decisions of the Court of Appeals

First case: Ex Sgto. Ángel D. Hernández v. Policía de P.R., KLRA201601162

This case also deals with the dismissal of a public employee. In said case, Mr. Ángel Hernández alleged before the TA that the Commission of Investigation, Prosecution and Appeal (CIPA) **erred in affirming** the determination of the Superintendent of the Police to **dismiss him** without having a *quantum* of **clear, robust and convincing** evidence. **Likewise**, the Appellant alleged before the TA that the JG **erred in having affirmed** UPRU's Resolution to **dismiss him** without having a *quantum* of **clear, robust and convincing** evidence. In the case of Mr. Ángel Hernández, the TA applied the standard of clear, robust and convincing evidence and reinstated said employee, while, in the case of the Appellant, the **TA refused** to apply said standard of proof, **even though this was one of the errors** that the Appellant brought to its attention in his brief for review, and despite the fact that in **reconsideration** the Appellant asked it to apply it. Consequently, we are facing a clear conflict of rulings by the TA, since that forum **did not apply the same standard of proof to employees who were in the same situation**. In the aforementioned case, the State could not prove that Mr. Ángel Hernández **did not** live in a certain

apartment in Guaynabo, because Mr. Ángel Hernández could not **cross-examine** the alleged owner of the Guaynabo Apartment, in which it was alleged he did not live. In the case of the UPRU against the Appellant, he was **also unable** to cross-examine his accuser, so in accordance with the Resolution in the case Ángel D. Hernández v. Policía de Puerto Rico, the UPRU could not have had clear, robust and convincing evidence to prove its case of sexual harassment against the Appellant for the mere fact that he did not have the opportunity to cross-examine his accuser, in accordance with what was resolved in the aforementioned case. The standard of clear, robust and convincing evidence has been **repeatedly applied** by the TA when the denial of a fundamental right by the State is involved, however, in the case of the Appellant said forum **refused to apply it**[1].

Second case: Compañía de Turismo v. Villas in PR Realty et al., KLAN201600964

This case was reversed by the TA because Compañía de Turismo **did not comply** with the provisions of Law No. 272-2003, or with what is established in one of its own regulations, namely Regulation 8395. In UPRU's case against the Appellant, the UPRU failed to comply with several of its regulations in the administrative process and did not **comply** with what was established in the "*Uniform Administrative Procedure Law of the Government of Puerto Rico*", Law No. 38-2017, as amended (LPAU); specifically, the UPRU **did not comply** with the provisions of

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[1] *See* Ex PM Ángel Vázquez Pagán v. Municipio de Carolina, KLRA201501253, page 17.

Sections 3.1 and 3.13(b) of said law. Regarding its regulations, UPRU did not comply with the provisions of Certification 130 (2014-2015), known as "*Institutional Policy against Sexual Harassment at the University of Puerto Rico*", which establishes the process for carry out an investigation of sexual harassment at the University of Puerto Rico[2]. As an example, the UPRU did not comply with the provisions of Articles IX-C, IX-F and IX-I of said Certification. Nor did it comply with the provisions of Article XIII-B of said Certification[3] **or** with the provisions of Article IX-e of regulation No. 3901[4], since in the administrative hearings the Appellant's right to conduct cross-examination guaranteed by said regulations was limited.

SECOND ERROR: THE TA ERRED BY NOT HAVING REVERSED THE ADMINISTRATIVE DETERMINATION, EVEN THOUGH THE APPELLEES INCURRED IN ILLEGAL ACTIONS DURING THE ADMINISTRATIVE PROCESS AT UPRU, SINCE THEY VIOLATED SECTIONS 3.1 AND 3.13(b) OF THE LPAU AND THEY VIOLATED THEIR OWN REGULATIONS ON MULTIPLE OCCASIONS. IN PARTICULAR, THE

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[2] See the conclusions of law contained in the Report of the Examining Officer (OE). Particularly, see A-183, paragraphs a and b. **That is**, see page 183 of the Appendix, sections a and b. Certification 130 is on pages A-519-536.

[3] *See* A-533.

[4] Certification No. 44 (1984-1985), https://www.uprm.edu/asesorialegal/wp-content/uploads/sites/152/2018/05/cert._44.pdf

ADMINISTRATIVE DETERMINATION WAS NOT BASED ON THE RECORD.

Discussion: To confirm that Atty. Carlo Rivera Turner was not permitted to **cross-examine** witnesses Vivian Vélez and Marisol Díaz Ocasio about the illicit change of grades to the students of the Mate 3012 course and that he preserved the error for appeal, see the transcript of the hearing of October 31, 2019 (*A-1203-1210*), and the transcript of the hearing of November 1, 2019 (*A-1427-1437*); to verify that the final grade of the Mate 3012 course was changed from **F to C** and the participation of Vivian Vélez and Marisol Díaz Ocasio in that "process", see the transcript of the hearing of October 30, 2019; see Certification No. 40 (2015-2016) (*A-573-578*) to verify that the Appellant had to participate in any reviewing process of his students' grades, and see the affidavit (*A-1596*) to verify that **he did not participate**.

Cross-examination

It is worth noting that the illicit change of grades to the students of the Mate 3012 course by officials of Dr. Heredia's administration is a **material fact** in the present controversy. *See A-110, premises #30-#37, and A-112, as well as A-122 and A-130, premise 5.* Therefore, not allowing cross-examination of Vivian Vélez and Marisol Díaz Ocasio about the illicit change of grades to the students of the Mate 3012 course, not only constituted a violation of Section 3.13(b) of the LPAU, but also obstructed the **search for the truth** in the administrative process. On multiple occasions this Court has stated that: "[i]n every adjudicative process, whether judicial, administrative or of any nature, the **purpose of finding the truth** and doing

justice to the parties must prevail," J.R.T. v. Aut. de Comunicaciones, 110 DPR 879, 884 (1981) (*Emphasis ours*) and, to achieve that purpose, the right to **cross-examine** witnesses is essential "**because this is the mechanism that the defense has to discover the truth**." People v. Daniel Cruz Rosario, 2020 TSPR 90. (*Emphasis ours.*) On the other hand, having limited cross-examination also constituted violations of *Article IX-e* of Certification No. 44 (1984-85) of the *Council of Higher Education*, Regulation No. 3901[5], and violations of Article XIII-B of Certification 130 (*see A-533*). These actions also restricted our right to challenge the credibility of Vivian Vélez and Marisol Díaz Ocasio, and constituted a serious **violation of due process of law**. The importance of cross-examination as an essential component of due process of law has been highlighted by both this Court and the Supreme Court of the United States. At the Federal level it has been expressed that:

> "In almost every setting where **important decisions** turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Goldberg v. Kelly, 397 US 254, 269 (1970). (*Emphasis ours.*)
>
> When the evidence consists of the testimony of individuals, who might be **perjurers** or persons motivated by **malice, vindictiveness, ..., the individual's right to show that it is untrue** depends on the right of confrontation and cross-examination.

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[5] Certification No. 44 (1984-1985), https://www.uprm.edu/asesorialegal/wp-content/uploads/sites/152/2018/05/cert._44.pdf

> Green v. McElroy, 360 US 474 (1959); Goldberg v. Kelly, 397 US 254, 269 (1970) (*Emphasis added.*)

The following quote is taken from the case Kentucky v. Stincer, 482 US 730 (1987):

> Cross-examination is "the principal means by which the believability of a witness and the truth of his testimony are tested." Davis v. Alaska, 415 US 308, 316 (1974). Indeed, the Court has recognized that cross-examination is the "'greatest legal engine ever invented for the discovery of truth.'" California v. Green, 399 US 149, 158 (1970), quoting 5 J. Wigmore, Evidence 1367, p. 29 (3d ed. 1940).

Likewise, the right to **cross-examine** witnesses has been recognized by this court through its jurisprudence. We quote:

> '[I]n the hearing, at least, **the parties must be guaranteed** "the opportunity to respond, present evidence and argue, **conduct cross-examination**, and submit rebuttal evidence." And if one party is not provided the opportunity to refute the other party's arguments, **the right to a hearing would be useless**. Com. de Seg. v. Real Legacy Ass. Co., 179, DPR, 692 (2010), 2010 TSPR 142. (*Citations omitted.*) (*Emphasis ours.*)

> "[F]or the confrontation to be meaningful, due process of law **requires** that the means be made available to the accused to **challenge the witnesses and attack their credibility**, as well as any analogous resource

> aimed at eradicating the falsehood of the trial." Pueblo v. Daniel Cruz Rosario, 2020 TSPR 90. (*Emphasis ours.*) (quoting Pueblo v. Guerrido López, 179 DPR 950, 958 (2010).)

Consequently, by having limited cross-examination, the Appellees violated the Appellant's rights recognized in Section 3.13(b) of the LPAU and rights recognized in the **aforementioned regulations of the University of Puerto Rico**. By doing so, the Appellees also violated Appellant's right to find the truth and his right to have participated in a **fair and equitable process**, which is the most basic requirement of **due process of law**. On the other hand, this Court has expressed that in the administrative sphere "flexibility and informality must prevail **so that all the information pertinent to the controversy can reach the factfinder**[6]. This, however, did not occur in the administrative proceedings that the Appellant faced before the UPRU, as we have expressed previously.

Dr. Tapia Distorted the Administrative Complaint

The *Administrative Complaint* was based on an accusation of sexual harassment by the Appellant of the student Génesis Vélez Feliciano. However, after the hearings were over, and after the OE submitted his Report, Dr. Tapia realized that the **UPRU could not prove the charges against the Appellant**.

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[6] OEG v. Rodríguez, 159 DPR 98, 113 (2003). (*Internal citations omitted.*) (*Emphasis ours.*) *See also* J.R.T. v. Aut. De Comunicaciones, 110 D.P.R. 879, 884 (1981); Pérez Rodríguez v. P.R. Park System Inc., 119 D.P.R. 634 (1987).

Then, **faced with that reality**, Dr. Tapia decided to find Appellant guilty for allegedly having created "an intimidating, hostile and offensive environment in the University's study environment" (or new theory of the case), which was not a matter which was part of the *Administrative Complaint* **nor is it regulated by Certification 130**. To achieve this goal, Dr. Tapia chose to assess the testimonial evidence himself, determine the proven facts, and form his own record of the case, usurping the functions that were exclusive to the OE. In a section of his Resolution entitled "**Additional Determinations of Proven Facts, according to the evidence that arises from the administrative record and that presented and admitted during the Administrative Hearings**[7]" ("additional facts"), Dr. Tapia **added** a series of facts that were not proven facts according to the criteria of the OE[8]. Next we will see that to prove his "new theory of the case" Dr. Tapia **exclusively used facts 40 to 49** of his "additional facts" section. We quote Dr. Tapia:

> "As it emerges from the testimonies, this behavior was perceived by the students as **uncomfortable** and **hostile** and the students complained about it with the university authorities." (It arises from the Additional Proven Facts number 40 to 49 and the stipulated fact number 6 of the Report of the Examining Officer.)" *Resolution, pages 29-30 (A-213-214.) (Emphasis ours.)*

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[7] *See* A-192-194.

[8] *See* A-160-169.

It is very clearly observed that the "additional facts" number 40 to 49 **come from the testimonies of the students that Dr. Tapia himself assessed**. Now, "stipulated fact number 6" only mentions that the students complained about the Appellant, so it **does not** provide evidence that there was an intimidating, hostile and offensive environment. The following has been taken from the OE Report:

> 6) That on May 24, 2018, several students from the MATE 3012 M-25 course went to the Dean of Academic Affairs and complained against the Respondent, Prof. Luis Arana Santiago.

It is important to note that the OE did not even believe the students felt **uncomfortable**, according to his Report. We quote:

> "The students who declared that they felt **very uncomfortable** with the actions and expressions of the Respondent towards the student Génesis Vélez Feliciano, however, **these expressions did not deserve credibility**. We base this on the fact that the students alleged that this situation began in March 2018 and lasted until almost the end of the course and they only informed the Complainant when they presented their **academic complaints, on the last day to withdraw partially**, in May 2018." (*Emphasis ours.*) (*See A-181*)

So it has been demonstrated that it does not follow from the OE's criteria that he believed that there was an intimidating, hostile and offensive environment in the classroom, so it is concluded that to try to demon-

strate that there was an "intimidating, hostile and offensive environment" in the classroom, Dr. Tapia based it **solely and exclusively** in the "additional facts" numbered 40 to 49, **which are not part of the administrative record**, since they were not proven according to the criteria of the OE. The following quote clarifies that in administrative adjudicative processes the examining officer is in charge of determining the proven facts, assessing the testimonial evidence and forming the administrative record.

> "The examining officer **is in charge of the crucial task of adjudicating the facts in controversy** during the course of the evidentiary hearing. His position requires him to compile, in a comprehensive manner, the evidence presented in the procedures, **that is, he is responsible of the formation of the administrative record**." Com. de Seguros de P.R. v. Real Legacy Ass. Co., 2010 TSPR 142. (Internal citations omitted; emphasis ours.) "Keep in mind that the examining officer **is the one who [. . .] has assessed credibility; in short, he is the one who has formed the record on which the adjudicator will base the final decision**." Com. de Seguros de P.R. v. Real Legacy Ass. Co., 2010 TSPR 142. (*Internal citations omitted.*) (*Emphasis ours.*)

From the previous quotes it is observed that Dr. Tapia abused his discretion by having made determinations of "proven" facts and by having assessed witnesses' credibility, since this function corresponded **solely** to the

OE. Now let's look at the conclusion that Dr. Tapia reached:

> "Having evaluated the totality of the particular circumstances of this case and in light of the facts proven by clear and convincing evidence and, in faithful compliance with the values, mission and objectives of this Institution, for the reasons set forth above, we conclude that the defendant Dr. Luis S. Arana Santiago incurred in violations of Article VIII (A)(3) and (B) (2) of the Institutional Policy Against Sexual Harassment at the University of Puerto Rico, Certification No. 130 (2014-2015) of the Governing Board, in accordance with the statutory provisions included, by creating an intimidating, hostile and offensive environment in the study environment of the University." *Resolution, Dr. Luis Tapia Maldonado, Conclusion and Determination, p. 33. (A-217) (Emphasis ours.)*

The above quote faces serious problems. It is clearly observed that Dr. Tapia dismissed the Appellant for allegedly having violated Articles **VIII (A)(3)** and **VIII (B)(2)** of Certification 130. Now, Dr. Tapia justifies said "violations" to Certification 130 because the Appellant allegedly created "an intimidating, hostile and offensive environment in the University environment." **This conclusion of Dr. Tapia is facially wrong**. We explain ourselves. Articles **VIII (A)(3) and VIII (B)(2)** come from Certification 130, so they cannot be violated merely for having created an "intimidating, hostile and offensive environment in the study environment of the University", for these

could only be violated when it is proven that there was hostile environment **sexual harassment** against **a** complainant, who in this case was the student **Génesis Vélez Feliciano**. So having dismissed the Appellant for violating Articles **VIII (A)(3)** and **VIII (B)(2)** of Certification 130, because he supposedly created "an intimidating, hostile and offensive environment in the environment of the University", **is a regulatory erroneous conclusion**, which should be sufficient for this forum to reverse the administrative determination. This without considering that said action by Dr. Tapia constituted a gross abuse of discretion and a gross violation of due process of law. We urge the Court to corroborate this matter urgently, because this matter disposes of the controversy immediately. *See* (*A-527-528*) to note that Articles **VIII (A)(3)** and **VIII (B)(2)** can only be violated when it has been proven that sexual harassment has occurred. Still, if we were to do the exercise of further examining Dr. Tapia's determination, we find other deficiencies. We have already seen that Dr. Tapia **himself evaluated the testimonial evidence** and **used some "proven facts"** that he himself adjudicated, **none of which are proven facts in this case, to then adjudicate the controversy for matters that did not appear as charges in the *Administrative Complaint***. To describe the actions of Dr. Tapia that we have just seen, the words of Associate Justice Kolthoff Caraballo could not be more pertinent:

> What other action could be more contrary to law and violative of due process of law? Ex Agente José L. Torres v. Policía de P.R., 2016 TSPR 224. (Emphasis ours.)

Due process of law does not allow a person to be found guilty of charges that were not brought against him or for having engaged in conduct that is not proscribed **by the regulations that they told him he had violated, directed at people who did not appear as claimants** in the complaint filed against him, who were motivated by the agency itself to testify against him. **This is precisely what has happened in this case**. Briefly, due process of law does not allow a person to face proceedings for certain charges, and after the hearing is over, be found guilty of something other than what he was accused of. Not only does due process of law not allow it, but the rule of law that applies to this case does not allow it either. We quote:

> "[T]he employee has the right to know the clear picture of his particular situation before making a decision regarding the legal strategy to follow. [It] constitutes a **clear macula** on this **due process of law** that **the citizen be induced by the State to the possibility of something different from what it finally turns out to be.** Therefore, once the employee accepts the conditions of what will constitute the process against him, **the State cannot vary such conditions** [. . .]. It is not about what the State has the right to do, but about what the State announced to the employee that it would do". Ex. Agente José L. Torres v. Policía de P.R., *supra*. (*Our bold.*) (*Underlined in the original.*)

In the case of Ex. Agente José L. Torres v. Policía de P.R., *supra*, this Court concluded that **due process**

of law was violated to former agent José Torres Rivera, because **after** an informal hearing was held, they applied disciplinary measures different from those that had been reported to him before facing the process. In the present case the situation is **much more terrible**, since, as we have seen, in the present case Dr. Luis Tapia **dismissed the appellant for charges completely different from those contained in the *Administrative Complaint*, which are not regulated by the Regulations that he accused him of having infringed**. Furthermore, Dr. Heredia had agreed that:

> **"If the charges are proven [...] I may impose any of the disciplinary sanctions authorized in Section 35.3 of the General Regulations [. . .][9]".**

Although the UPRU could not proved the charges brought against the Appellant in the *Administrative Complaint* filed by Dr. Heredia, Dr. Tapia nevertheless dismissed him. It is important to mention that upon examining the administrative record carefully it can be seen that "additional facts" number **40** to **49** constitute **amendments to the allegations**, and that they **were timely** and **consistently objected** by Atty. Carlo Rivera Turner[10]. Now, the practice of amending the complaint by the evidence presented when the livelihood is at stake, as it happens in the present case, has been consistently rejected by this Court,

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[9] Formulation of Charges, Dr. José Heredia Rodríguez, October 12, 2018. (*Emphasis ours.*) (*See* A-100.)

[10] *See* the transcript of the hearing of October 30, 2019.

since, in particular, it violates **due process of law**. We quote:

> "Imposing disciplinary sanctions against the lawyer for some of those Canons (of Professional Ethics)-absent in the complaint-would mean violating his due process of law, denying him the opportunity he has by right to prepare an adequate defense and preventing him, likewise, to protect his livelihood." In re Francis Pérez Riveiro, 180 DPR 193 (2010), 2010 TSPR 230, *p. 9.*

This is because cases involving severe sanctions on public employees are considered quasi-criminal cases and, therefore, are not treated as if they were ordinary civil cases. In the preceding paragraphs we have demonstrated that Dr. Tapia **did not base his decision on the record**, but rather he based it on his own record, therefore **section 3.1 of LPAU** had been violated in the administrative process, and likewise **one of the fundamental requirements of due process of law**. According to the rule of law that applies to this case, the violation of section 3.1 of the LPAU, **by itself**, entails the **immediate reversal** of the administrative determination in the present case. We quote:

> "[W]hen we endorsed the practice of delegating the power to adjudicate disputes to administrative agencies, we started from the premise that the **citizen would receive certain guarantees**. Given that these minimum guarantees are duly delimited in the LPAU, it cannot be said that the agencies are unaware of them and, therefore, **there is no reason to act outside of them**. "Com. de

> Seg. v. Asoc. Empl. del E.L.A, 2007 TSPR 112, p. 14. (*Emphasis ours.*)" **Compliance with the laws does not constitute part of the discretion that we have consistently recognized to administrative agencies**." *Id.*, page.*15*. (*Emphasis ours.*)
>
> "In accordance with the above, we resolve that the non-inclusion of the examining officer's report in the administrative file when-as in this case-said official does not have the power to adjudicate, **constitutes a violation of the LPAU**, which **entails the invalidity of the administrative resolution**. We have already resolved that any administrative determination that has been made without regard to the minimum guidelines established in section 3.1 of the LPAU–**among which is the right to have the decision based on the record – cannot prevail**." *Id., pp. 15-16* (*citing* Mun. de Ponce v. Junta de Planificación, 146 DPR 650 (1998)). (*Emphasis ours.*)
>
> "Remember that the parties **have the right** to have their case adjudicated solely and exclusively based on what the record contains." Com. de Seg. de P.R. v. Real Legacy Assurance Co.,, *supra.* (*Emphasis ours.*)

As we saw in the previous quotes, this court has ruled that when an agency acts outside the LPAU, this **is sufficient** to **not affirm** the administrative determination. The following quotes confirm it:

> "In view of the fact that this first statement by the association [which constituted a violation of section 3.18 of the LPAU] disposes of the case in its entirety, **we will not address the remaining errors**. Com. de Seg. V. Ass. Emp. del E.L.A., *supra*, page 16. (*Emphasis ours.*)
>
> "This court has been consistent in affirming that section 3.1 of the LPAU **mandates** that all administrative decisions be based on the record." Ofic. Com. De Seg. v. Ass. Emp. Del E.L.A., 2007 TSPR 112. (*Emphasis ours.*)
>
> "[C]ourts will refrain from upholding an administrative decision if the agency: (1) erred in applying the law; (2) acted **arbitrarily, unreasonably**, or **illegally**, or (3) **violated fundamental constitutional rights**." P.C.M.E. v. Jta. de Cal. Amb., 2005 TSPR 202, *pp. 19-20.* (*Citations omitted.*) (*Emphasis ours.*)

Let us remember that in the present case the Appellees also violated section 3.13 (b) of the LPAU, as we saw previously, since in the administrative process our right to cross-examination was unjustifiably limited and, consequently, not all matters pertinent to the controversy were allowed to be considered in the hearing[11]. By the way, the illicit change of grades to the students of the Mate 3012 course turned out to be a **evidentiary conflict** for the UPRU that it **did not resolve**, which constituted another action by the

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[11] Remember that Dr. Luis Tapia also did not consider the illicit change of grades, which is a fact that dramatically undermines the administrative determination.

UPRU outside the rule of law that applies to the present case. We quote:

> "This regulation is based on the interest that, when making determinations, the agency is based exclusively on **officially admitted evidence and matters**; in the materials that were taken judicial notice and **in everything that happened in the hearing**." Ofic. Com. de Seg. v. Asoc. de Empl. del ELA, 2007 TSPR 112 (Citing D. Fernández Quiñones, El Derecho Administrativo y Ley de Procedimiento Administrativo Uniforme, 2nd Ed., Ed. Forum, Colombia, 2001, page 537.)
>
> "This safeguard - in conjunction with the other guidelines established in section 3.1 - also constitutes **a means of ensuring that the administrative body will have before it all the elements of judgment to issue an appropriate decision. This guarantees that the adjudicator has weighed all the factors that may influence his decision**, especially that which is related to the evaluation of the evidence and the adjudications of credibility. In this way, the citizen is assured that the agency has taken into consideration all the evidence presented and that their participation in the hearing was truly effective. Such a guideline is consistent, in turn, with the requirement that administrative decisions should **reflect that the agency has considered and resolved evidentiary conflicts**, and **has determined both the proven facts and**

those that were rejected". *Id.* (*Citations omitted.*) (*Emphasis ours.*)

Summary

The foregoing clearly demonstrates that the Appellant faced a process of hostile environment sexual harassment of the student Génesis Vélez Feliciano, but given that the UPRU could not prove the charges against the Appellant, Dr. Tapia dismissed him for a **matter other** than the charges that were formulated in the *Administrative Complaint*, **which in turn were not regulated by Certification 130**. This constitutes a **double aggravating factor** in Dr. Tapia's Resolution. The third aggravating factor is that to try to justify his new "theory of the case," Dr. Tapia made his own determinations of "proven facts." Taking into account that the person in charge of determining the proven facts and forming the record of the case was Atty. Luis Sevillano Sánchez, it is forced to conclude that Dr. Tapia's Resolution **was not based on the record**.

The photo from April 5, 2018 (See A-592.)

The photo from April 5, 2018 supports the OE's determination that he did not believe the students who declared they felt **uncomfortable** in the classroom. Said photo was taken by the students of the Mate 3012 course themselves on April 5, 2018 and sent it to the Appellant that same day[12]. This photo came about as a result of the students hiding outside the classroom to try to get the class dismissed for that day. Upon entering the classroom and realizing that the

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[12] *See* A-1074-1077.

students were not there, Appellant went down to his office and sent them an email holding them responsible for the material that would had been covered that day. Some of the students immediately replied to that email, **including Génesis Vélez Feliciano**, to demonstrate to the Appellant that they had returned to the classroom, and that they were waiting for him. Now, after observing the smiling faces of the students in that photo, especially the face of Oscar Rivera, who was one of those who initiated the complaint process against the Appellant, and that of Génesis Vélez Feliciano, who was supposedly the "harmed one", **could** a **reasonable and impartial mind** believe that these students felt threatened, uncomfortable, or that a hostile environment prevailed in the presence of the Appellant?

At this time, the famous words of Judge Raúl Serrano Geyls could not be more appropriate:

> "We judges should not, after all, be so innocent as to believe statements that no one else would believe" Pueblo v. Luciano Arroyo, 83 DPR 573, 582 (1961).

Not only this, but Génesis Vélez Feliciano was one of those who answered the email to the Appellant, and in her response to it she used "**capital letters**" to express herself and said: "We ARE in the classroom" (*See* A-628). From the previous discussion it emerges that during the administrative process there were a series of **illegal actions by the UPRU**, which entails for the **immediate reversal** of both the TA Sentence and the **administrative determination**. The following quote confirms it:

> "Notwithstanding the foregoing, courts will refrain from upholding an administrative decision if the agency: (1) erred in applying the law; (2) acted **arbitrarily, unreasonably or illegally, or (3) violated fundamental constitutional rights**." P.C.M.E. v. Jta. of Cal. Amb., *supra, pp. 19-20.* (*Citations omitted.*) (*Emphasis ours.*)

SIXTH ERROR: THE TA ERRED BY NOT HAVING APPLIED THE CRITERIA OF CLEAR, ROBUST AND CONVINCING EVIDENCE TO CASE KLRA202100375. CONSEQUENTLY, THE TA ERRED BY NOT HAVING REVERSED THE ADMINISTRATIVE DETERMINATION DUE TO LACK OF CLEAR, ROBUST AND CONVINCING EVIDENCE.

EIGHTH ERROR: THE TA ERRED BY HAVING AFFIRMED THE ADMINISTRATIVE DETERMINATION, EVEN THOUGH IT WAS NOT BASED ON THE CHARGES THAT THE UPRU MADE TO THE APPELLANT IN THE ADMINISTRATIVE COMPLAINT, AND EVEN THOUGH THE UPRU ERRONEOUSLY APPLIED ITS REGULATIONS.

Discussion: The commission of this error by the TA comes from the discussion of the **second error**, *ante*. In the discussion of said error we demonstrated that Dr. Tapia did not dismiss the Appellant for the charges that were formulated in the *Administrative Complaint*, but rather he dismissed him for supposedly having created "an *intimidating, hostile and offensive environment in the University's study environment*," which did not appear as a charge in the *Administrative*

Complaint **nor is it conduct regulated by Certification 130**.

Comments

What has happened in this case is evident. UPRU administrators, beginning with Dr. Heredia's administration and continuing with Dr. Tapia's administration, planned to dismiss the Appellant when **he objected to illicitly approve the students** of the Mate 3012, M25 course. To achieve this purpose, through abuse of power and false representations, they promised to and indeed changed the final grade of all the students of the course Mate 3012, M25, from F to C, illicitly, and then used them as accomplices to implement their plan to dismiss the Appellant, constituting this a perfect *quid pro quo* act between UPRU administrators and the students. But then, given their dissatisfaction that the UPRU could not prove its case in the administrative hearings, they decided that their **illegal** and **risky act** of having changed the students' grades could not be fruitless, so Dr. Tapia opted to dismiss the Appellant for matters that were not part of the *Administrative Complaint*, carrying out his actions contrary to the rule of law that applies to this case, including violations of the LPAU and due process of law, as we saw previously. It is worth mentioning that it didn't escape to Atty. Carlo Rivera Turner that at the administrative hearings the UPRU was trying to prove a theory of a generalized intimidating and hostile environment, instead of trying to prove the charges for which it accused the Appellant, and he **warned** and **objected** to this **opportunely**. *See A-844-845.*

APPENDIX J
FORMULATION OF CHARGES

FORMULATION OF CHARGES

UNIVERSITY OF PUERTO RICO IN UTUADO
UTUADO, PUERTO RICO

UNIVERSITY OF PUERTO RICO IN UTUADO,

Complainant,

v.

DR. LUIS S. ARANA SANTIAGO,

Defendant.

About: Disciplinary Action

FORMULATION OF CHARGES

TO: DR. LUIS S. ARANA

The undersigned, Rector of the University of Puerto Rico in Utuado, in the exercise of the powers and responsibilities conferred to me by Law Number 1 of January 20, 1966, as amended (Law of the University of Puerto Rico), the General Regulations of the University of Puerto Rico, Certification Number 44, Series 1984-85, of the Council of Higher Education, as amended, and other applicable laws and regulations in force, make this statement of charges against you, Dr. Luis S. Arana Santiago, professor of the University of Puerto Rico in Utuado, for violations of articles VIII(A)(1), VIII(A)(2), VIII(A)(3), VIII(B)(1) and VIII(B)(2) of the Institutional Policy Against Sexual

Harassment at the University of Puerto Rico, Certification Number 130, Series 2014-2015, of the Governing Board of the University of Puerto Rico, and sections 35.2.8 and 352.19 of the General Regulations of the University of Puerto Rico.

The facts for which charges are filed arise from the evidence collected by the Student Attorney Marisol Díaz Ocasio. The Student Attorney Díaz Ocasio submitted a report containing the witnesses interviewed, sworn statements, precautionary measures and recommendations regarding the regulatory provisions applicable to the conduct and the disciplinary measures that must be applied. From the investigation report it follows that the defendant has engaged in conduct constituting sexual harassment, which is contrary to university regulations and the laws of Puerto Rico. The facts that give rise to the charges are the following:

1. The defendant is a professor of the MATE 3012-M25 course, offered at the University of Puerto Rico in Utuado in the first semester of the 2017-2018 academic year.
2. The student Génesis Vélez Feliciano is a student at the University of Puerto Rico in Utuado and was enrolled in the MATE 3012-M25 course, offered by the defendant, Dr. Luis S. Arana.
3. On May 24, 2018, the aforementioned student appeared at the Student Attorney's Office and presented a verbal complaint about several incidents that occurred with doctor Arana.

4. Dr. Luis S. Arana use to get closed to Vélez Feliciano and pulled up his pants.

5. Dr. Luis S. Arana constantly called her to solve mathematical problems in her mind and expressed to the student that she seemed to like strong men, boys with money and expensive cars. This was a pattern of Dr. Arana.

6. Dr. Luis S. Arana also asked her whether his boyfriend could solve his mental problems.

7. Dr. Luis S. Arana approached the student's face and told her that she seemed to like parties and go out. Furthermore, he asked her if her boyfriend could solve his mental problems.

8. The student Génesis Vélez Feliciano personally expressed to him that these gestures and expressions bothered her, because she felt afraid and they were unwelcome.

9. Due to the events described above, the student Génesis Vélez Feliciano felt uncomfortable, intimidated, and harassed and stopped attending the course in which she was enrolled with the defendant doctor. The Student Attorney established precautionary measures for the student to finish the semester.

10. The conduct incurred by the defendant violates the aforementioned provisions of the General Regulations of the University of Puerto Rico, inasmuch as the Institutional

Policy Against Sexual Harassment at the University of Puerto Rico, Certification Number 130 (2014-2015), and Law Number 3 of January 4, 1998 that prohibits sexual harassment in educational institutions, 3 L.P.R.A. secs. 149 et seq.

11. With the alleged acts, the defendant incurred in conduct subject to disciplinary sanctions under sections 35.2.8 and 3.2.19 of the General Regulations of the University of Puerto Rico:

Section 32.2.8 Acts that under the canons of moral responsibility prevailing in the community constitute immoral conduct.

Section 35.2.19 Violations of the provisions of this Regulation and other university regulations.

Furthermore, the conduct attributed to the defendant specifically violates Article VIII, sections A(1), A(2), A(3), B(1) and B(2), of the Institutional Policy Against Sexual Harassment at the University of Puerto Rico, Certification Number 130 (2014-2015), and Article 4 of the aforementioned Law Number 3 of January 4, 1996.

WARNINGS

If the charges are proven, in my capacity as Appointing Authority, I may impose any of the disciplinary sanctions authorized in Section 35.3 of the General Regulations of the University of Puerto Rico. Therefore, I advise you of your right to be represented by an attorney during all stages of the formal administrative procedure that begins with this Formulation of Charges. You are also warned that if you do not

present a response to the Formulation of Charges filed here within the term of fifteen (15) business days counted from its notification, or if you do not appear at the hearings at any stage of the proceedings, or fail to comply with the orders or provisions issued by the Examining Officer that I am designating, you may be found in default and the administrative hearing of the case may be carried out or the procedure may continue without your appearance as we deem appropriate.

In accordance with Certification Number 130, cited above, and Article VI of the Standards to Regulate Disciplinary Procedures Affecting University Personnel, Certification 44, series 1984-1985, as amended, of the Council of Higher Education, it is hereby notified that I have appointed Atty. Luis Sevillano Sánchez as Examining Officer to presides over the hearings of the Formulation of Charges and receives the evidence that both parties wish to present. The Examining Officer will summon an administrative hearing in which the case will be elucidated on the merits. You have the right to appear at said hearing represented by an attorney, to cross-examine adverse witnesses, to present evidence, and be notified in advance of the evidence on which the charges brought against you are based. After the administrative hearing is finished, the Examining Officer will submit a Report to the Rector with the determinations of facts, conclusions of law and recommendation on the corresponding disciplinary actions he deems appropriate, if any. The proceeding of the Administrative Hearing and those prior to it will be carried out in accordance with the procedure established in the aforementioned Certification 44–Standards to Regulate Disciplinary Procedures That Affect Univer-

sity Personnel–, series 1984-1985, of the Council of Higher Education, as amended. You are hereby notified that the complaining party intends to use the testimony of the following witnesses:

1. Génesis Vélez Feliciano, student
2. Jann R. Romero Santiago, student
3. Janiska Henández, student
4. Carla Torres Garay, student
5. David Ureña Negrón, student
6. Eduardo Franceschini Gonzalez, student
7. Kevin Rivera Robles, student
8. Oscar Rivera Gonzalez, student
9. Marisol Díaz Ocasio, Student Attorney

I HEREBY CERTIFY THAT: I have sent a true and exact copy of this document to Dr. Luis S. Arana Santiago by certified mail to his postal address: HC 01 Box 2209, Morovis, Puerto Rico 00687.

Respectfully submitted, in Utuado, Puerto Rico, today, October 12, 2018.

/s/ José L. Heredia Rodríguez
University of Puerto Rico in Utuado

APPENDIX K
CERTIFICATION 130 (2014-2015)

CERTIFICATION 130 (2014-2015)

BOARD OF GOVERNORS
UNIVERSITY OF PUERTO RICO

CERTIFICATION NUMBER 130
2014-2015

I, Ana Matanzo Vicens, Secretary of the Board of Governors of the University of Puerto Rico, DO HEREBY CERTIFY THAT:

The Board of Governors, in its regular meeting on the 13th day of April of 2015, having considered the recommendations of its Appeals and Laws and Regulations Committee, has agreed:

WHEREAS: On January 8, 2015, by way of Certification No. 45 (2014-2015), the Board of Governors proposed the approval of an *Institutional Policy against Sexual Harassment at the University of Puerto Rico*, with the purpose of establishing the University of Puerto Rico policy regarding sexual harassment, defining different types of sexual harassment and the procedures to follow in order to address grievances or complaints of this nature, and establishing a policy to protect against retaliations for reporting alleged acts of sexual harassment for participating in related proceedings, among other purposes; moreover, establishing that Circular No. 95- 06 of September 12, 1995, Circular No. 88-07 of May 27, 1988 (Regulation No. 3925), Board of Trustees Certification No. 45 (2008-2009), and any other certification, circular, regulation, or any other rules incompatible with

this new policy shall be rendered ineffective hereby on the day it takes effect.

WHEREAS: Pursuant to the Uniform Administrative Procedure Act for the Commonwealth of Puerto Rico, Law No. 170 of August 12, 1988, as amended, the Board published on January 12, 2015 a notice of the proposed action on the Internet and in one newspaper of general circulation in Puerto Rico. A period of thirty (30) days from the date of publication of the notice was allowed for written comments to be submitted or to file a substantiated petition for public hearings.

WHEREAS: The Board of Governors, within such time and before reaching a definitive decision regarding the adoption of the aforementioned proposed Regulation, received one comment that was analyzed with the assistance of UPR Central Administration officers.

WHEREAS: The Board of Governors evaluated and considered the comment received and agreed to incorporate the various recommendations that improved the proposed policy; likewise, using its experience, technical competency, specialized knowledge, discretion, and good judgment when reaching a decision regarding the definitive provisions of the policy.

NOW THEREFORE: Pursuant to the expressions set forth herein, the Board of Governors resolved to:

1. Approve the new *Institutional Policy against Sexual Harassment at the University of Puerto Rico* to establish a University policy regarding sexual harassment, define the different types of sexual harassment and the

procedures to follow in order to address grievances of this nature, and establish a policy to protect against retaliation for reporting alleged acts of sexual harassment or for participating in related proceedings;

2. Determine that this new *Institutional Policy against Sexual Harassment at the University of Puerto Rico* be filed at the Department of State for the Commonwealth of Puerto Rico, pursuant to the aforementioned Uniform Administrative Procedure Act;

3. Provide that this new policy shall take effect thirty (30) days after filing at the Department of State.

IN WITNESS WHEREOF, I issue the present certification, in San Juan, Puerto Rico, today, April 15, 2015.

[signature Ana Matanzo Vicens]
Ana Matanzo Vicens
Secretary

Institutional Policy Against Sexual Harassment at the University of Puerto Rico

Certification No. 130 (2014-2015)

Registered on April 30, 2015 at the PR State Department as Regulation Number 8581

Article I-Title

This document shall be known as **"INSTITUTIONAL POLICY AGAINST SEXUAL HARASSMENT AT THE UNIVERSITY OF PUERTO RICO".**

Article II- Legal Basis

This Institutional Policy is adopted and promulgated pursuant to the faculties conferred by Article 3 of Law No. 1 of January 20, 1966, 18 L.P.R.A. § 602 *et seq.*, as amended, known as "University of Puerto Rico Act," and according to the provisions of Article II, Section I of the Constitution of the Commonwealth of Puerto Rico, and in harmony with the following laws:

- "Act to Prohibit Sexual Harassment in the Workplace," Law No. 17 of April 22, 1988, as amended, which imposes responsibility on the employer to prevent, discourage, and avert sexual harassment and to establish a policy on sexual harassment in compliance with this obligation, as well as to adopt adequate and effective internal procedures to address sexual harassment complaints.
- "Act to Prohibit Sexual Harassment in Learning Institutions," Law No. 3 of January 4, 1998, 3 L.PR.A. § 149a-149k, as amended

by Law No. 38 of January 24, 2006, applicable to institutions of higher education, as recognized by the Supreme Court of Puerto Rico in Aguadilla v. Lorenzo Hernández, 184 DPR 1001 (2012).

Article III- Purpose

The purpose of this Policy is to regulate the filing, investigation and adjudication of claims and complaints of alleged acts of sexual harassment and retaliation carried out by members of the university community or visitors against students, employees, faculty, contractors, or persons who visit the university to receive services or orientation.

Article IV- Definitions

For the purposes of this Policy, the following terms are defined:

A. Appointing Authority – Chancellor of the academic unit where the incident took place. In the case of the University of Puerto Rico Central Administration or an academic unit assigned to it, it refers to the President.

B. Contractor – Any natural person or legal entity who works for or renders services under contract to the University of Puerto Rico.

C. Employee – Any person who renders services in exchange for a wage, salary or any other form of remuneration as a career, confidential, part-time, or temporary employee, wage worker, or any other type of appointment

within the structure of the University of Puerto Rico or any applicant for employment.

D. Student – Any person taking one or more courses of any kind or nature in any of the academic units of the University of Puerto Rico. Individuals who drop out of the Institution after allegedly incurring in conduct in violation of the provisions of this Institutional Policy, individuals who are not officially matriculated during a particular term of study but maintain a continuing relationship with the Institution, or individuals who have been notified of admission to the University shall also be considered "students". In addition, persons living in student residences belonging to the University shall be considered students, even if not matriculated.

E. Sexual Harassment – Conduct of a sexual nature and other behaviors with sexual connotations that are unsolicited or rejected by the person against whom said conduct or behaviors are directed and that affect the dignity of the person, as defined by Law No. 17 of 2008, as amended.

F. Investigator – Person designated by the Director of the Office of Human Resources or the Director of Legal Affairs to carry out an initial investigation of a claim for alleged sexual harassment or retaliation.

G. Examining Officer – Person designated by the President or a Chancellor of the University of Puerto Rico to preside a formal admin-

istrative proceeding, following the filing of a sexual harassment complaint and the filing of charges to said effect.

H. Professor – Member of the faculty, as defined by the General Regulations of the University of Puerto Rico.

I. Claim – Petition or a verbal or written grievance presented by a student, employee, applicant for employment, contractor, or visitor to the University of Puerto Rico, in which the person alleges he or she was the object of sexual harassment by an employee, student, visitor, or contractor of the University of Puerto Rico or of retaliation.

J. Claimant – Person who files a claim in which he or she alleges to be the object of sexual harassment or witnessed said acts against another person with the right to file a claim, pursuant to the Policy on sexual harassment and retaliation established herein.

K. Complainant – Appointing Authority o authorized representative of the University of Puerto Rico who files a complaint for sexual harassment or retaliation.

L. Complaint – Action brought by the Appointing Authority against the accused after an investigation into the alleged acts stated in the complaint and finding that charges should be filed against the accused.

M. Accused – Person who is charged with committing sexual harassment against another

person or with taking retaliatory measures against someone.

N. Retaliation – Those actions taken by the employer or the employee which constitute an adverse decision regarding the claimant's terms or conditions of employment, academic standing or services rendered as a result of having filed a claim or has offered testimony in any claim, complaint, or administrative proceeding for sexual harassment.

O. Supervisor – Person who exercises a certain level of control, manages or evaluates employees, and whose recommendation is taken into considerations when hiring, classifying, firing, promoting, transferring, establishing compensation or shifts, location or conditions of work, and duties and assignments that an employee carries out.

P. Visitor – Person who visits the University of Puerto Rico, but who is not a employee or contractor.

Article V- Institutional Policy and Objectives

Sexual harassment in the workplace or in the academic environment is an illegal and discriminatory practice incompatible with the best interests of the University of Puerto Rico. Under no circumstances shall any person be permitted to create an environment characterized by sexual harassment in any of its types or manifestations in the workplace or in the academic environment.

In full compliance with this responsibility, the Institutional Policy established herein shall be disclosed

to all employees and students, who shall receive orientation regarding the prohibition of sexual harassment in the workplace and in the academic environment. Every employee and student shall be responsible for notifying immediately any claim or act of sexual harassment known to them.

Article VI- Interpretation

This Policy shall be interpreted in accordance with the provisions of the laws and regulations conferring it authority, in order to ensure the speedy adjudication of sexual harassment claims for all claimants, employees, professors, students, contractors, and visitors, as well as the due process of law and the fair and prompt attention of all matters presented.

Article VII- Confidentiality

Investigative procedures and records in regards to claims and complaints filed shall be kept confidential. Records from the investigation shall be kept in secure place specially designated for such purposes in the Office of Human Resources, the Office of Legal Affairs, the Office of the Dean of Students, or to the Disciplinary Board of each corresponding unit. Submitted reports should be kept with these records and no copies may be circulated to any office within the University, unless a request is made to examine the records as part of the appeals process.

Once the Appointing Authority's decision to impose a disciplinary measure is notified, the records and the investigation report are no longer confidential, and shall be open to inspection by any of the parties under written request. No information shall be disclosed regarding sexual harassment complaints that have

been filed and are under investigation or those that have been dismissed during any stage of proceedings.

Article VIII- Sexual Harassment and its Modalities

A. Sexual harassment in the workplace, in the academic environment or rendering services consists of any kind of unsolicited sexual approach, requests for sexual favors, or any other verbal or physical acts that are sexual in nature or can be reproduced using any means of communication, including, but not limited to, the use of multimedia tools through the web or any electronic method, or when one or more of the following circumstances is present:

1. When submission to such conduct implicitly or explicitly becomes a term or condition of employment, study or services from a person.
2. When submission to or rejection of such conduct by a person is used as a basis for academic or employment decisions of any kind regarding the affected individual.
3. When that conduct has the effect or purpose of unreasonably interfering with the individual's academic or work performance or when it creates an intimidating, hostile, and offensive environment in which to work or learn.

B. Sexual harassment applies to situations in which the prohibited conduct occurs between individuals of the same sex or of the opposite sex. There are two (2) categories:

1. *Quid pro Quo* – Harassment that involves sexual favors as a condition or requisite for obtaining benefits in the workplace, academic environment or services. This type of harassment is present when submitting or accepting such conduct implicitly or explicitly becomes a term or condition of employment or affects the individual's academic standing, or when submitting, accepting or rejecting the prohibited conduct is used as a basis for academic or employment decisions of any kind regarding the affected individual.
2. Hostile or offensive environment to work or learn - Harassment that, although it bears no financial impact, creates a hostile or offensive workplace or academic environment. Therefore, submitting a person to expressions or acts of a sexual nature in a generalized or severe form that has the effect of altering the individual's condition of employment or academic standing or creates a hostile and/or offensive environment in which to work or learn, including the use of information technology tools belonging to the University of Puerto Rico or other private electronic means to cause a hostile or offensive environment, constitutes sexual harassment.

Article IX- Informal Procedure

A. Any individual who believes he or she has been subjected to acts constituting sexual harassment at the University of Puerto Rico may file a claim to open an investigation, if deemed necessary, and have University authorities take the appropriate actions. This

applies to relationships between faculty-student, student- student, employee-student, employee-employee, supervisor-employee, and vice versa, and with members of the community, applicants for employment or admission to the University. It also applies to contractors and visitors in analogous situations to the aforementioned.

B. If the claimant were an employee of the University, he or she must file a claim with the supervisor, dean or office director of the assigned office. Said supervisor, dean or director, in turn, shall refer the matter immediately to the corresponding Office of Human Resources. In any case, the claimant may present the matter initially to the director of the corresponding Office of Human Resources. The claimant may also refer the matter to the unit's Equal Employment Opportunity Office for orientation and later referral to the Office of Human Resources.

C. If the claimant were a student, he or she must file a claim with the Student Advocacy Office or the Office of the Dean of Students.

D. If the claimant were a contractor or visitor, he or she must file a claim with the Office of Human Resources of the institutional unit where the incident took place.

E. The written claim or initial report of a verbal claim should contain the following information:

1. Name of the person presenting the claim or grievance
2. Contact information
3. Date and place where the incident took place

4. A brief account of the incident
5. Names of witnesses and of the person against whom the sexual harassment claim is filed

F. Informal proceedings shall be confidential and no information whatsoever shall be disclosed to third parties. Whenever possible, the wishes, concerns and interests expressed by the claimant shall be addressed first and foremost.

G. In order to protect the claimant, available and appropriate interim measures may be established as soon as possible, for example:

1. Arranging so that the claimant reports to another supervisor and that communications between the accused and his or her supervisor be mediated by this supervisor, in cases where the supervisor is the accused party.
2. Limiting interactions at the workplace to the presence of others, so the claimant may not have to be alone with the accused during working hours.
3. Any other measure that, under the particular circumstances of the case, are deemed necessary.

These interim measures may be taken motu proprio by Chancellors, the President or his or her authorized representative, as applicable, or they may be requested by the parties immediately after presenting the claim or complaint. If adopted, they shall stay in effect during the investigation and until the adjudication of the complaint. The interest of the claimant shall be taken into consideration when deciding to adopt these measures. These measures shall not be construed as dis-

ciplinary actions against the party to whom they apply.

H. The investigation shall contain sworn statements by the claimant and the person against whom the claim is presented and any other person who has partial or full knowledge of the alleged facts. No inquiry will be made into the history or previous sexual behavior of the claimant, nor shall it be part of any purpose of the investigation. The manner of dressing is irrelevant to the controversy. Therefore, it may be given no consideration during the investigation.

I. The person against whom a claim is presented shall be have opportunity to be informed of the allegations against him or her and to present his or her position or defense. Provided, however, that during this stage of proceedings, the right to due process of law available in formal proceedings does not apply. Nonetheless, he or she may attend the meeting with legal representation.

J. If the claimant does not participate in the investigation or decides to withdraw the claim, the investigation shall continue, taking this fact and all available evidence into consideration.

K. The investigation shall be initiated within a reasonable period of time, which shall not be longer than seven (7) working days, in order to ensure its timely resolution. Within a reasonable period, no longer than fifteen (15) working days, absent exceptional circumstances, the office charged with the investigation shall file a report to the Appointing Authority with the outcome of the investigation and his or her recommendations.

L. If charges are found to proceed, formal proceedings shall be initiated. Regardless of the decision, parties shall receive notice of the Appointing Authority's determination.

Article X- General Provisions

A. All supervisors or employees who are aware of an act of sexual harassment at the University of Puerto Rico are obligated to report the situation to the corresponding office immediately, in accordance with Article IX – Informal Procedure.

B. Any employee with direct knowledge of an act of sexual harassment or has witnessed such acts is obligated to report the situation immediately to the Office of Human Resources of the institutional unit. Any student with direct knowledge of an act of sexual harassment or has witnessed such acts must report said situation to the Student Advocacy Office or the Office of the Dean of Students immediately. Failure to report these acts or behaviors in a timely fashion will be considered a violation of the Policy herein established and may be grounds for disciplinary action.

C. Acts of sexual harassment may originate from supervisors to employees and/or to third parties, such as visitors, from employee to employee, from faculty to students, from students to students, from employees to students, and vice versa in all cases. All claims, information or reports of alleged acts of sexual harassment received shall be investigated thoroughly and expeditiously. After determining the veracity of the alleged acts, appropriate actions or corrective measures shall be taken to remedy the situation. Whenever acts of sexual harassment originate from third parties not employed by the University, the

necessary corrective measures that are reasonably at the disposal of the University and in accordance with the law will be established to ensure the immediate cessation of said acts. The scenarios described herein shall not be construed as an exhaustive list of all acts.

D. Anonymous claims will not be investigated.

E. Before any employee or contractor begins rendering services at the University of Puerto Rico, the employee or contractor must certify that he or she received a copy of this Policy by the Office of Human Resources of the corresponding institutional unit.

F. Allegations to establish that the claimant allowed the advances and invitations or that the claimant previously sustained a relationship with the alleged harasser shall not be considered hindrance for an investigation.

G. No retaliations may be taken against a claimant for having filed a claim for sexual harassment. However, nothing herein shall limit the liability of individuals, employees or students who, knowingly, raise frivolous claims by this Policy.

H. At any time the claimant may withdraw his or her claim in writing.

I. Any person who is required by the investigator assigned to the case to testify or present any form of evidence has the duty and obligation to cooperate in providing the requested testimony or evidence.

J. The cessation of conduct constituting sexual harassment shall not provide sufficient cause to suspend the investigation.

K. The person charged with carrying out the investigation shall notify all parties participating in the sexual harassment or retaliation proceedings of their rights under applicable laws and regulations.

Article XI- Formal Procedure

A. Formal proceedings are initiated with the filing of a written complaint by the Appointing Authority of the institutional unit where the accused studies or renders services, in order to impose the appropriate disciplinary actions in accordance with the General Regulations of the University of Puerto Rico or the General Student Regulations, as applicable.

B. The complaint must include:

1. Concise account of the alleged conduct of the accused.
2. A detailed account of the legal provisions and regulations allegedly infringed and the disciplinary actions proposed.
3. Notice to the accused of his or her right to have legal representation.
4. Notice to the accused that failure to respond to the complaint within of fifteen (15) working days after receiving notice of the complaint, the Examining Officer shall proceed to set the date and celebrate the administrative hearing and may emit a default judgment. If the accused were a student, the period in which to respond to the complaint shall not exceed thirty (30) calendar days, in accordance with the General Student Regulations.

C. Notice of the complaint shall be given to the accused in a period of time not exceeding fifteen (15) working days since charges were filed.

Article XII- Examining Officer

Concurrent with the filing of the complaint, the Appointing Authority of the institutional unit where the accused studies or renders services shall designate an Examining Officer to oversee the complaint proceedings and receive the related evidence.

The Examining Officer shall give written notice to the claimant and the accused of the date, time and place of the administrative hearing in order to receive all evidence the parties may present regarding the alleged facts contained in the complaint. The Examining Officer shall inform the parties that all legal arguments should be filed in a period of time not exceeding five (5) working days prior to the date of the hearing.

Article XIII- Administrative Hearing

A. The administrative hearing shall be public, unless a party files a written and duly substantiated petition requesting that the hearing be held in private. In such a case, the Examining Officer presiding the hearing may rule to hold the hearing in private if he or she finds that the requesting party would otherwise be subject to irreparable harm. Each party by him or herself, or by way of legal counsel, may present relevant and testimonial evidence. During the proceedings, formal evidentiary rules shall not apply, unless the Examining Officer determines that applying all or some of the rules may be necessary to conduct the administrative proceedings in an orderly fashion. In any case, the admission of evidence during the pro-

ceedings shall be governed by the general rules of relevance, materiality, and competence that the evidence offered could have regarding the controversy at hand.

B. During the administrative hearing, each party shall have the right to be heard, confront the evidence and cross-examine the witnesses presented by the opposing party.

Article XIV- Report from the Examining Officer

When the hearings have concluded, the Examining Officer shall issue a written report to the Appointing Authority for the institutional unit where the accused studies or renders services. Said report shall contain:

1. Account of the proven facts.
2. Account of the formulated conclusions of law.
3. Recommendations regarding the disposition of the case. Except where just cause is found, the report must be submitted in a period of time not exceeding thirty (15) calendar days from the day the case was remitted for decision.

Article XV- Appointing Authority

The Appointing Authority of the institutional unit where the accused studies or renders services shall decide the outcome of the case after reviewing the report submitted by the Examining Officer and impose the appropriate disciplinary actions, if any, according to the General Regulations of the University of Puerto Rico or the General Student Regulations. The Appointing Authority shall notify the accused of his or her decision in writing by certified mail with

acknowledgment of receipt and shall. Notice shall also been given to the accused of his or her right to appeal the decision to the forum and within the time period established by University regulations regarding appellate procedure. The Appointing Authority shall inform the final outcome in writing to the alleged victim by certified mail with acknowledgment of receipt.

Article XVI- Unforeseen Situations

Any situation not considered by this Policy shall be resolved in a manner consistent with public policy and with the provisions contained in special legislation against sexual harassment and in applicable law. In any unforeseen case, decisions reached shall consider public interest, the interest of the University in institutional order and the right of all persons to the due process of law. Whenever possible, swift resolution should be ensured. The complaint should be resolved within six (6) months since it was filed, absent exceptional circumstances. In all cases not provided for herein, the University of Puerto Rico regulatory statues contained in the General Student Regulations and the Rules Regulating Disciplinary Proceedings Affecting University Personnel, Certification No. 44, 1984-1985 of the former Council on Higher Education, as amended by Certification No. 94, 1989-1990 of the Council on Higher Education, shall apply.

Article XVII- Other Remedies; Statute of Limitations

The filing of a complaint under this Policy shall not bar the claimant from other legal remedies available, including appealing to the appropriate federal or state agency or forum. In no case shall the filing a

claim or complaint under this Policy interrupt the statute of limitations established by law or administrative rules and regulations.

Article XVIII- Procedure for Summary Suspension

The provisions of this Policy do not alter the faculties of the Appointing Authority to activate the procedure for summary suspension of any member of the University community, in accordance with applicable rules and regulations.

Article XIX- Policy against Retaliations

A. The University of Puerto Rico shall maintain a work and learning environment free from retaliations brought as a result of filing or participating in investigative or adjudicative proceedings. In no case may an individual be terminated, suspended, threatened, or discriminated against regarding the terms, conditions, location, benefits, or privileges of employment or affect his or her academic standing for having offered or brought, verbally or in writing, any testimony, expression or information in an legislative, investigative or judicial forum regarding acts of sexual harassment.

B. The employer and all supervisors shall ensure that no retaliations are taken in his or her area by any employee, supervisor, professor, student, contractor, or third party related to the institution.

C. An employee who feels he or she is or has been a victim of retaliation in the workplace must file a claim with the supervisor, dean or director of the office assigned to the area where he or she works. These

employees shall refer the matter immediately to the corresponding Office of Human Resources or Equal Employment Opportunity Office. However, the employee may refer the matter initially to the director of the Office of Human Resources of the corresponding unit. Provided, this provision applies exclusively to University of Puerto Rico employees.

D. A student who feels he or she is or has been has been victim of retaliation in the academic environment or in the rendering of services must file a claim with the Student Advocacy Office of his or her institutional unit. This employee shall refer the matter immediately to the corresponding Office of Human Resources when the alleged acts of sexual harassment stems from an employee. Provided, this provision of the Institutional Policy applies exclusively to University of Puerto Rico students.

E. All claims received regarding alleged retaliations shall be investigated.

F. The investigation and all formal and informal proceedings arising from such investigation shall be carried out in accordance with the provisions of Articles IX and XI of this Institutional Policy.

Article XX- Separability

If any article or segment of this Institutional Policy is declared unconstitutional, invalid or void by a court of justice or authority with jurisdiction, the remaining provisions and parts of this Policy shall not be affected, hindered or invalidated thereby. Rather, its effect shall be limited to the article or segment so declared unconstitutional or void.

Article XXI- Interim Provisions

This Policy shall affect Certification No. 45 (2008-2009) of the former Board of Trustees; Circular No. 95-06 of September 12, 1995, and all certification, circular, regulation, procedure or part thereof inconsistent with these provisions. The procedures herein established shall take precedent over any other that prove inconsistent.

All claims and complaints under investigation at the moment this Policy enters into effect shall continue until its final resolution. The procedural rights herein established for the claimant and the accused shall be applicable to them after this Policy takes effect.

Article XXII- Effectiveness

This Institutional Policy shall take effect thirty (30) days after filing at the Department of State.

APPENDIX L
CERTIFICATION 40 (2015-2016)

CERTIFICATION 40 (2015-2016)

BOARD OF GOVERNORS
UNIVERSITY OF PUERTO RICO

CERTIFICATION NUMBER 40
2015-2016

I, Edna S, Oquendo Laboy, Secretary of the Academic Senate of the University of Puerto Rico in Utuado, **CERTIFY THAT**:

The Academic Senate, at its extraordinary meeting held on March 29, 2016, had before it the report of the Academic Affairs and Course Evaluation Committee. After the required discussion, this Senate **unanimously agreed to**:

Approve the *Procedure for the Review of Qualifications of the University of Puerto Rico in Utuado.*

The Procedure is made part of this Certification.

And to send it to the corresponding university authorities, I issue this certification with the seal of the University of Puerto Rico in Utuado, on the thirtieth day of the month of March, two thousand and sixteen.

/s/ Sra. Edna S. Oquendo Laboy
Secretaria del Senado Académico
Secretary

RGVG/esol

/s/ Raquel G. Vargas Gómez, Ph. D.
Presidenta y Rectora
[SEAL]

PROCEDURE FOR THE REVIEW OF QUALIFICATIONS

I. Introduction

This document establishes the official procedure for requesting a review of grades obtained in various evaluation instruments during the course of an academic semester, and grades already filed in the Office of the Registrar, as well as the procedures that the different institutional bodies must follow. The purpose of this procedure is to respond quickly to the request for review of an assignment's grade or the final grade of a course.

The General Student Regulations of the University of Puerto Rico is the document that establishes the rights and duties of the students as members of the academic community, and establishes the structures for their participation in university life. Article 2.12 of said regulations establishes the right of every student to a fair and appropriate review of his grade:

> *"The student may request the professor to review the evaluation when he or she understands that it does not correspond to the established or agreed criteria, and in that case he or she has to follow the grade review procedure established or customarily done in each unit. The first instance of the review process starts with the professor who was in charge of the course. [The grades and other materials used to evaluate the student] has to be retained by the professor for six (6) months after he has entered the student's final grade. Each Academic Senate will establish the*

procedures to be followed to ensure a fair and adequate review."

Although the student's right to review his or her grade is acknowledged, and it had been specified that the first instance of the process is the professor, the establishment of procedures to guarantee said review is delegated to the Academic Senates. Certifications No. 2004-05-36 (Procedure for Changing Grades of Students) and 2005-06-16 (Extension of implementation of Certification No. 36) of the Academic Senate of the UPR in Utuado, establishes a grade review procedure that partially clarifies how the process will be channeled.

Section B of Certification No. 2004-05-36, [as] amended, establishes that:

1. *The student may request the professor to review the evaluation when he understands that it does not meet the established or agreed criteria, and in that case he will follow the grade review procedure described in Certification No. 40 (2015-2016).*
2. *If the professor determines that the error is from the Registrar's Office, he will direct the student to that office.*

The student must initiate the procedure if, in his opinion, the grade obtained in any work, exam or other evaluation instrument used to determine the final grade in a course, as well as the final grade itself, does not correspond to the agreements, criteria or evaluation standards established at the beginning of the course. From Certification 119-2014-2015 of the Governing Board (Policy of the University of Puerto Rico on the Student Advocacy Office), it is clear that

the Student's Advocacy officer may serve as an advisor in all instances contained in this procedure.

II. Procedure Related to the Review of the Grade in an Assignment, Exam or Other Evaluation Instrument

a. The student who needs a review of his grade during the semester, would have to request in writing (See Annex 1 - Grade Review Request) to the department in which the professor who taught the course is assigned, within a period of five (5) business days from the date on which he received the grade, a meeting with the professor to discuss the agreements, criteria or evaluation standards of any work, exam or any other evaluation instrument which he is not sure he had been evaluated rightfully.

b. The professor will meet with the student within a period of five (5) business days from the moment the student files the written request.

c. In the event that the result of this dialogue is not satisfactory for the student, or the professor does not take any action to the student's request, the student must request in writing (*See* Annex 1 - Grade Review Request), with a copy to the professor, a meeting with the Director of the Department, who will have a period of five (5) working days to mediate between the student and the professor.

III. Procedure Related to the Review of the Final Grade

a. Within fifteen (15) business days after the semester starts, a student may request a review of a final grade for a course that had been taken the pre-

vious semester. [In this case], [t]he student has to request in writing (*See* Annex 1 - Grade Review Request) to the department to which the course is assigned (with a copy to the Director of the Department), a meeting with the professor to discuss how the agreements, criteria, or evaluation standards utilized in determining the final course grade had been applied.

b. Within ten (10) business days from the filing of the written request, the professor will explain to the student how he/she awarded the student grades in all the course work and, if the student requests it, show the student the evaluations in dispute. In the event of a disagreement, the student and the teacher will keep the evaluation materials until the process is resolved.

c. In the event that the student has not received a response from the professor within ten (10) business days, or does not agree with the explanation provided, he or she may request a reconsideration following the procedure described below:

i. The student will file a written reconsideration request (Annex 1 – Grade Review Request) to the Director of the Department to which the course belongs (with a copy to the professor), within five (5) business days, from the moment they receive the professor's decision or the professor's ten (10) day deadline expires.

ii. In his writing, the student must explain why he understands that his grade does not adequately conform to the course evaluation criteria, as defined by the professor and/or

the grades obtained by the student in the course.

iii. Once the student's request for reconsideration is received, the Director will act on it within a period of five (5) business days to address the request and make a decision on that matter. Within this period the professor must demonstrate to the Director that he used the stipulated evaluation criteria and explain how he awarded the student's grades. Based on the evidence presented and the interviews conducted, the Director must communicate his decision in writing to the parties. The documentation must include both the student's allegations and the professor's written response. The Director will maintain a record containing all documents (i.e., transcripts, evaluation instruments and grade records) related to the reconsideration until it is resolved.

iv. If the student is dissatisfied with the decision of the Director of the Department, or if the Director does not act within the stipulated period of five (5) working days, the student may appeal it in writing (See Annex 1 - Grade Review Request) to the Academic Achievement Committee (with a copy to the professor, the Department's Director and the Student Advocacy officer) within a period of ten (10) business days from the date on which he had received the Director's determination or the Director's deadline expires. The appeal brief must explain why the

disputed final grade is incorrect and why he is dissatisfied with the determination.

v. A student who is a candidate for graduation may file the appeal directly before the Committee (with a copy to the professor and the Student Advocacy officer), after presenting his or her request for review to the professor, without the need to request reconsideration from the Department's Director.

IV. Procedures of the Academic Achievement Committee

a. Once the appeal request is received, the Committee will study and evaluate the evidence [in the record] and may request additional documents if it deems necessary. The Committee will obtain a copy of the record in the Department and may interview the parties involved.

i. If the Committee deems it necessary to interview one of the parties involved, it must offer equal time to the other party involved.

ii. The professor and the student are the parties involved who, if necessary, will have direct communication with the Committee, either in person or with the help of the necessary electronic or telephone means. Only in cases of inability to communicate or difficulty in understanding, will a person [a party] be allowed to go accompanied before the Committee.

iii. The Committee may request advice from experts in the area, preserving the anonymity of the parties involved.

iv. In the event that the professor of the course on which the appeal is taken belongs to the same Department as any of the members of the Committee, that member of the Committee must inhibit himself and be replaced by an alternate professor elected by the faculty.

b. The Committee will meet and notify to the parties their decision in writing (with a copy to the professor, the Department Director and the Student Advocate) within fifteen (15) business days from the date it received the appeal request. The Committee's decision letter must include an explanation of the decision.

c. In the event that the decision favors the change of grade, the Committee, via the Dean of Academic Affairs, will inform the Registrar's Office so that it can proceed to make the grade change.

d. The procedures must be conducted in Spanish or English depending on the language that allows the most efficient presentation of the student's or teacher's arguments.

e. The Committee's decision is the final decision of the administrative process carried out by the UPR in Utuado, and cannot be appealed.

f. Controversies related to compliance with the terms established in this procedure will be clarified by the Committee.

g. The members of the Committee must keep in absolute confidentiality all the information and documentation that is produced in these proceedings, including, but not limited to, the names of students

and professors involved, the partial or final grades awarded, the resolution of the case and any information pertaining those involved.

University of Puerto Rico in Utuado
Academic's Affairs Office

Grade Review Request
(ACCORDING TO CERTIFICACTIION NO. 40-2015-16)

GRADE TO BE REVISED:

◊ PARTIAL

◊ FINAL

PETITION ADRESSED TO:

◊ COURSE PROFESSOR:

◊ DEPARTMENT'S DIRECTOR:

◊ ACADEMIC ACHIEVEMENT COMITTEE

Student's name:

Student's Id:

Phone number:

Institutional Email: @upr.edu

Mailing Address:

Course:

Professor Assigned:

Semester:

◊ 1st Sem 20_- 20_

◊ 2nd Sem 20_- 20_

◊Summer 20_

Brief Narrative:

Student's signature:

Date:

Received by:

Date:

Name in printing:

Action Taken: _____

Student's Signature:

Date:

Professor's Signature:

Date:

Department's Chairman Signature:

Date:

President of Academic Achievement's Signature:

Date:

APPENDIX M
CASE KLRA201501253:
EX PM ÁNGEL VÁZQUEZ PAGÁN V. MUNICIPIO DE CAROLINA,
COURT OF APPEALS OF PUERTO RICO
(DECEMBER 15, 2016)

**CASE KLRA201501253:
EX PM ÁNGEL VÁZQUEZ PAGÁN V.
MUNICIPIO DE CAROLINA, COURT OF
APPEALS OF PUERTO RICO
(DECEMBER 15, 2016)**

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
JUDICIAL REGION OF SAN JUAN
PANEL I

EX PM ÁNGEL VÁZQUEZ PÁGAN,

Respondent,

v.

MUNICIPIO DE CAROLINA,

Petitioner.

Case No. KLRA201501253

Administrative Revisión coming from the Comission of Investigation, Processing and Appeal

Before: Fraticelli TORRES, president, Judge, Ortiz FLORES, Judge and Ramos TORRES, Judge.

JUDGMENT

In San Juan, Puerto Rico on December 15, 2016.

The petitioner, Autonomous Municipality of Carolina, asks us through a judicial review writ to

revoke the resolution issued on May 6, 2016, archived on September 10, 2015, by the Investigation, Prosecution and Appeal Commission. In the aforementioned ruling, the administrative body modified the expulsion sanction imposed on the respondent, municipal police officer Ángel Vázquez Pagán, with a suspension of employment and salary for ninety days. Consequently, the petitioner was ordered to reinstate the municipal official in his position and pay him the salaries, benefits and liquidations he had lost, in excess of the sanctioned term.

After considering the arguments of both parties and having the transcript of the oral evidence, we resolve to confirm the appealed resolution. Let us now examine the factual and procedural background that justifies our decision.

I.

The facts that support this appeal begin with the presentation of an appeal by municipal police officer Ángel Vázquez Pagán, Plate 180, assigned to the Autonomous Municipality of Carolina, before the Investigation, Prosecution and Appeal Commission, from whose opinion the Municipality appeals.

According to the administrative record, on July 23, 2012, Sergeant Horvel Ortega Rendón filed complaint 2012-8-066 against the respondent municipal police officer.[1] He alleged that on Saturday, June 2, 2012, Mr. Vázquez Pagán contacted his supervisor, Lieutenant José Fargas Serate, and told him that he had a problem, so he requested the day off. Lieutenant

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[1] Appendix, p. 53.

Fargas Serate granted it. However, on July 23, 2012, Sergeant Ortega Rendón noticed that on the attendance sheet, police officer Vázquez Pagán reported that he had worked more than eight hours that day, June 2.[2] The document authorizing the licenses states that the municipal police officer used a one-day license on June 6, 2012. He awarded the license to the balance of days for compensatory time (DTC). In the same form, he indicated that on June 2, 2012 he worked an extra hour over the work day, due to the celebration of the patron saint's festivities.[3] Commander Freddie Márquez Vergara, Commissioner of the Municipal Guard, evaluated and referred the complaint to the Internal Affairs Investigation unit.

The investigation was led by Mrs. Jessenia Santiago Marrero, who after expressing the required warnings, questioned the municipal police officer Vázquez Pagán about the alleged facts.[4] The officer stated that he has worked for twelve years as a municipal police officer in Carolina, assigned to the Maritime Unit, under the supervision of Sergeant Ortega Rendón. He declared under oath and without legal representation that on the date of June 2, 2012, his supervisor was Lieutenant Fargas Serate and that he did not work that day, since he authorized him to go on leave. He maintained that he had filled out the attendance sheet by **involuntary error** and that **he had no intention of defrauding the treasury**. He

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[2] Appendix, p. 52.

[3] Appendix, p. 55.

[4] Appendix, pp. 56-57. Testimony number 4296, dated January 16, 2016, before Notary Midzaida Irizarry Ramírez.

explained that he used the sheet of the municipal police officer Ángel Martínez Llanos.[5] He added that since the sheets arrived several days later, **he forgot that Lieutenant Fargas Serate had authorized his leave**. He reiterated that the **discrepancy was due to an unintentional error and that he had balances for compensatory time**. He added that his reputation as a member of the Police Municipal was worth more than eight hours of work.

On November 4, 2013, the mayor of the Municipality of Carolina, Hon. José Aponte Dalmau, signed a communication to Mr. Vázquez Pagán in which he expressed the following:[6]

> From the investigation carried out, it emerged that, on June 2, 2012, you were absent. Even so, you noted on your timesheet that you had served on the aforementioned day, when you were aware that Lieutenant. José Fargas Serate, had authorized the day.
>
> Therefore, you incurred in what is established in the provisions of **Article 13, Section 2, Serious Misdemeanors (1), (34) and (54), of the Municipal Police Regulations**, which read:
>
> (1) Be involved in acts, by action or omission, that constitute a violation of the criminal, ethical, special or general, state and federal laws that are in force in the Commonwealth of Puerto Rico.

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[5] Appendix, pp. 50, 54.

[6] Appendix, p. 31.

(2) Alter the content of any official or private report or document.

(54) Write, prepare and/or submit any official report, knowing that it, or part of it, is false or has been falsified.[7]

The Department of Internal Affairs has recommended me that you be dismissed as a disciplinary measure. I have accepted that recommendation and notify you of the intention to impose this measure on you.

Emphasis on the original.

Police officer Vázquez Pagán was informed of his right to request an informal hearing, which he exercised in a timely manner. The examining officer, José Rivera Llantín, presided over the procedure and submitted his report,[8] in which concluded that the officer had committed the serious offenses charged numbers (1) and (54). He was exempted from serious misconduct (34). The official recommended dismissal and argued:

> In the present case we do not give any credibility to the excuse presented by the Promovent that he remembered the day off. After examining the attendance sheet we realized that it covered the period from June 2 to 8, 2012. The Promovent corrected this sheet and signed it on June 14.

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7 See Annex 12 of the Appendix (pp. 58-227), particularly pp. 163, 167 and 172.

8 Appendix, pp. 228-230.

> When the Promovent made the corrections on said sheet, he made reference to June 6, the date on which he was also absent with authorization. We cannot justify that you remember your absence on June 6 and that you have not remembered an absence four (4) days before.

As a result of the procedure, on March 17, 2014, the mayor sent a communication to Mr. Vázquez Pagán in which finally and firmly determined the dismissal, effective upon receipt, which occurred ten days later.[9]

Unsatisfied, on April 14, 2014, the municipal police officer went to the Investigation, Prosecution and Appeal Commission (hereinafter, the CIPA), where he presented an appeal document[10] and requested the administrative entity to hold a formal hearing in a *de novo process*. The Municipality of Carolina presented its responsive allegation[11] and argued that Mr. Vázquez Pagán had been untruthful by altering the assistance and that said action warranted the imposed dismissal.

On May 6, 2015, the CIPA held the formal hearing of the Case No. 14PM-175, chaired by Mr. Humberto Sepúlveda Santiago, along with the Comissioners, Antonio Montalvo Nazario and Bárbara Sanfiorenzo Zaragoza. The parties stipulated[12] various

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[9] Appendix, pp. 28-30.

[10] Appendix, pp. 26-27.

[11] Appendix, pp. 23-25.

[12] Appendix, pp. 23-25.

pages of separate books that records the entries and exits of the employees. Namely: the first stipulated document, the Polígono book, corresponds to pages 233-241, and records the dates from May 30 to June 3, 2012;[13] the second stipulated document, that of the Villa Esperanza Barracks, includes pages 39-46, which are refer to the period of patron saint's festivities, from May 31 to June 4, 2012.[14]

For the Municipality, Sergeant Ortega Rendón, Lieutenant Fargas Serate and police officer Martínez Llanos testified. Several pieces of documentary evidence were also admitted. The municipal police officer did not testify.

Sergeant Ortega Rendón declared that he had filed an administrative complaint against the municipal police officer, for having indicated on the attendance sheet that he worked certain hours in which he did not render his services, since Lieutenant Fargas Serate had granted him the day off.[15] He indicated that the assistance process is recorded weekly (from Saturday to Friday), but that he did not remember when the police officer Vázquez Pagán handed over the sheet for the questioned week.[16] During the cross-examination, the sergeant acknowledged that there were two ways to record attendance: a puncher using the hand and the entry and exit book. That is, if the officials are in an activity, the punch does not necessarily appear, but

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[13] Appendix, pp. 40-49.

[14] Appendix, pp. 32-39.

[15] Transcript of the Oral Evidence, p. 9.

[16] Transcript of the Oral Evidence, pp. 14-15.

rather the attendance is recorded in different books. Furthermore, if the personnel in charge do not empty the puncher's memory, the device does not record attendance.[17]

The official admitted that there were no deletions or corrections on the attendance sheet and that no criminal charges were brought against the officer under appeal.[18]

Sergeant Ortega Rendón signed the contested attendance sheet, without ever having communicated with the municipal police officer Vázquez Pagán to discuss the matter that caused him to file the complaint.[19]

MRS. COMMISSIONER

P Prior to this situation where the shift ended at 2:00 [am] which turned out to be June 2, but which counts as the first, how many times had there been this problem with this man?

R Well, in that aspect there had been problems more than once, by a margin, right, maybe . . . to give you an example, he would leave at 4:00 in the morning, **he would ask the officer of the day for three hours or two compensatory hours to leave because he had an appointment or had court** and then . . . how do I explain it to you? When the sheet came it said that he left

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[17] Transcript of the Oral Evidence, pp.20, 23-24.

[18] Transcript of the Oral Evidence, pp. 21-22.

[19] Transcript of the Oral Evidence, pp. 21, 27-28, 34.

at 4:00 and when I checked the entry and exit book I realized that there was a small error there.

P **The problem is that if it was for the court it was an official management, right?**

R **Yes, it was an official management.**

P And that doesn't count, they write that down in the book?

R No. The time that is granted for leaving earlier in the day is compensatory to any leave you have accumulated.

P And how many times before . . . how many times did it happen that?

A More than once.

P **And where is that in your? Did you file complaints against the person?**

R No never. He was given the sheet and he corrected it.

P In other words, to a certain extent he was aware of the supervision, he was writing down hours that he did not have . . . that he had not worked.

A Well . . .

Q And were he allowed?

R I gave him the benefit of the doubt and fixed it right away . . . I gave him a little note because I never saw him, because he worked a night shift and I work during the day, and he fixed it.

P And that . . . as you tell me, it was several times, was it more than two, more than three?

R More than one.

Q More than one?

A More than one.

Q More than one, is it two?

R It could be two, it could be three. I don't remember for sure.

Transcript of the Oral Evidence, pp. 33-34. Emphasis supplied.

These alleged events were not charged in this investigation report or in any other.[20] In sum, from the testimony and the evidence presented it follows that, during the patron saint's festivities, Mr. Vázquez Pagán started his work shift at 5:00 pm on June 1,[21] and finished it the next day, day 2, at 2:00 am. He returned to work on the 3rd, but the witness was unable to specify what time.[22]

For his part, Lieutenant Fargas Serate testified that on June 2, 2012, who supervised Mr. Vázquez Pagán during the patron saint's festivities, granted the respondent a compensatory time leave for that day's shift, which began at 4:00 pm. This type of leave is paid, but cannot be recorded as worked hours. During the patron saint's festivities, the municipal

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[20] Transcript of the Oral Evidence, p. 38.

[21] Appendix, p. 3. 4; Transcript of the Oral Test, p. 29.

[22] Transcript of the Oral Test, p. 39.

police had to report to him and record his attendance in the Polígono book. The lieutenant indicated that he never spoke to his supervisor about the matter of the complaint.[23] He also denied that attendance was recorded in a notebook during the festivities.[24]

Municipal police officer Martínez Llanos, also assigned to the Maritime Unit, declared that he worked five days, without a partner, in the platform area during the patron saint's festivities.[25] He maintained that on the first day "an attendance sheet was circulated" and the rest of the time the Polígono and Villa Esperanza book were used.[26] He indicated that he worked from 5:00 pm on June 1, 2012, until 2:00 am on the 2nd; that is, an extra hour.[27] The officer stated that he never authorized Mr. Vázquez Pagán to use his attendance sheet.[28]

At the end of the hearing, the CIPA denied the Municipality's request to call Mr. Vázquez Pagán as a witness. However, it admitted as part of the file the sworn statement given by the respondent before the investigator, as well as the Municipal Police Regulations and the report of the examining officer.[29] In the final argument, Mr. Vázquez Pagán's counsel

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[23] Transcript of the Oral Evidence, pp. 46-48, 50-51.

[24] Transcript of the Oral Evidence, p. 48.

[25] Transcript of the Oral Evidence, p. 55.

[26] Transcript of the Oral Evidence, pp. 56, 61, 66.

[27] Transcript of the Oral Test, p. 57.

[28] Transcript of the Oral Evidence, p. 60.

[29] Transcript of the Oral Evidence, pp. 76, 82, 84, 89.

indicated that the serious misconduct alleged was not proven. The Municipality's counsel argued the opposite.[30]

On May 6, 2015, notified on September 10, 2015, the CIPA issued the appealed resolution.[31] It determined proven the following facts:

1. In 2012, the appellant Ángel Vázquez Pagán was a member of the Carolina Municipal Police assigned to the Maritime Unit.
2. From May 30 to June 3, 2012, its Patron Saint's Festivities were celebrated in the Municipality of Carolina.
3. Like other municipal police officers, appellant Ángel Vázquez Pagán was assigned in those **days to a special service in varied shifts** supervised by the lieutenant José F. Fargas Serate.
4. On June 2, 2012, Vázquez, Pagán contacted the Lt. Fargas Serate requesting permission to be absent that day.
5. **Fargas Serate authorized appellant to be absent and instructed him to charge the day to the available balance for compensatory** or sick time.
6. **Several days later, the appellant prepared and submitted his attendance sheet for the week of June 2 to 8, 2012, which he completed, due to the Arrival**

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[30] Transcript of the Oral Evidence, pp. 92-94.

[31] Appendix, pp. 17-22.

and Exit Book not being available, copying the schedules of PM Ángel Martínez Llanos who had those days work shifts similar to him.

7. **The appellant Vázquez Pagán did not realize that he had included June 2, 2012 as a day worked, a day that with authorization from the Lt. Fargas Serate, had been absent.**

8. When authorizing assistance, it was up to Sgt. Horvel Ortega Rendón, immediate supervisor of the appellant and who was unaware of the appellant's absence on June 2, 2012 because he did not have him under his command on that date nor did he consent to it.

9. **After having authorized the appellant's attendance and having sent it to the Lieutenant. José Trinidad, Sergeant Ortega Rendón was informed by Lieutenant. Fargas Serate that the appellant had requested on June 2, 2012,** which he granted because he had not worked that day.

As a consequence of this information, the situation was referred for an administrative investigation in which the appellant voluntarily declared and admitted having claimed work on June 2, 2012, but by mistake, for having copied the information without corroborating it, but without any intention. to claim time not worked due to that he did not

> have to do so since he had accumulated licenses against which he could charge that day.

Emphasis supplied.

Based on the evidence presented and believed, the CIPA concluded that the municipal police officer committed serious misconduct (1) by violating ethical standards due to his carelessness and, consequently, claiming hours not worked, but not to the extent of entailing expulsion. The agency understood that even with the appearance of impropriety of said procedure, there was no clear, robust and convincing evidence of the intention to defraud nor was recidivism proven.

Regarding serious offenses (34) and (54), the CIPA concluded that there was a total absence of evidence.

The CIPA determined the need to sanction the officer for the serious offense (1) committed, through a ninety-day suspension of employment and salary. Consequently, it ordered the reinstatement of the salaries and benefits that he stopped earning in excess of that term.

Dissatisfied, the Municipality unsuccessfully requested[32] that the CIPA reconsider its decision and declares certain facts proven.[33] Given the refusal, it filed this appeal for judicial review, as well as a supplementary argument after the stipulated presentation of the transcript of the oral evidence. Likewise, in

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[32] Appendix, pp. 1-2.

[33] Appendix, pp. 3-16.

compliance with the order, the respondent appeared with a written opposition.

The Municipality of Carolina submits that the CIPA committed four errors related to (1) the evidentiary standard of clear, robust and convincing evidence;[34] (2) the lesser degree of the proven serious misconduct; (3) the determination of the absence of evidence in charge (54); and (4) the assessment of the evidence.

Once the writ has been submitted, let us review the relevant legal framework, followed by the application to the issues raised.

II.

- A -

The Municipal Police Law, Law No. 19 of May 12, 1977, authorizes any municipality to establish a surveillance and public protection body called the Municipal Police to prevent, discover, investigate and prosecute certain types of crimes. 21 LPRA § 1063. Pursuant to Section 5 of the Municipal Police Law, the mayor has the power to adopt regulations that provide for the organization and administration of the Municipal Police, as well as the obligations, responsibilities and conduct of its members. 21 LPRA § 1065.

In the case of the Municipality of Carolina, the Municipal Police Regulations were adopted through Ordinance No. 08, Series 2000-2001-05, approved on July 31, 2000. In Article 13 of the Regulations, called

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[34] In the supplemental argument, the Municipality did not elaborate on this error.

"Disciplinary Actions", serious or minor offenses are listed and the power of the mayor to summarily suspend a member of the Municipal Police Force from employment for the reasons listed there is established. In turn, Article 14 of the Municipal Police Regulations, "Procedure for Imposing Disciplinary Measures", establishes the different sanctions that may be imposed for the commission of serious or minor offenses. **Section 2 provides that, in cases of serious infractions, disciplinary measures may be: demotion, suspension of employment and salary not exceeding three months, a combination of these or dismissal.**

Article 15 of the Municipal Police Regulations, "Investigative Procedure", establishes the investigative procedure in these cases, which begins with the presentation of a complaint. The investigator will submit a report to the Director in which he will analyze all the evidence received and the results obtained on whether or not the alleged violation was incurred in. The Director, in turn, will submit a special report to the Mayor with his recommendation on whether or not the disciplinary measure should be imposed. The Mayor will determine the disciplinary measure to be imposed in each case and will send the respondent the "Letter of Intent to Impose Disciplinary Measures", in which he will be warned of his right to request an informal administrative hearing at the Human Resources Office of the Mayor's Office and the term to do so.

To comply with the prior informal hearing procedure required in cases of dismissal of a public employee, in accordance with due process of law, the defendant may request an informal administrative hearing,

conducted by an examining officer. See, Section 7 of Article 15 of the Municipal Police Regulations. Once the procedure is completed, the examining officer will issue a recommendation to the mayor, through a written resolution that will contain determinations of fact, conclusions of law and his recommendation on whether or not the intention to impose the disciplinary measure that was notified to the defendant should be confirmed. The mayor may accept the recommendation or may make another decision and will notify the defendant. This letter will inform the defendant of his or her right to appeal that determination before the Investigation, Prosecution and Appeal Commission.

-B-

Law No. 32 of May 22, 1972 created the Investigation, Prosecution and Appeal Commission as an administrative appeal forum to intervene in cases in which misuse or abuse of authority is attributed to any state or municipal public order official, agent of Internal Revenue or any other Executive Branch official authorized to make arrests. 1 LPRA § 171 et seq.; Arocho v. Policía de PR, 144 DPR 765, 770-771 (1998); Rivera v. Superintendente, 146 DPR 247, 263 (1998); González y otros v. Adm. De Corrección, 175 DPR 598, 607 (2009); Calderón Morales v. Adm. De Correccción, 175 DPR 1033, 1036 (2009).

Article 2 of Law 32 establishes that the CIPA will have, among its functions, to act as an appeal forum with exclusive jurisdiction to hear and resolve appeals filed by public officials covered by the law, when the head or director of the agency or agency of which in question has imposed any disciplinary measure

related to actions covered by law, or with minor offenses in which a reprimand or suspension of employment and salary has been imposed, or serious offenses in the case of members of the state or municipal police or of other agencies that have similar regulations. 1 LPRA § 172.

In the exercise and fulfillment of its functions, powers and obligations, the CIPA is authorized to hold public or private hearings, which may be presided over by any Commissioner designated by the President and with an audience of the interested parties. 1 LPRA § 173. After holding the corresponding hearing, the CIPA may confirm, revoke or modify the determination or action from which it has been appealed, or may impose any sanction that the authority empowered to sanction could have imposed. Notwithstanding the above, **the CIPA may modify its determination for the purposes of increasing or aggravating a sanction only when, from an analysis of the record, or the evidence presented before that body, or both, it appears that the head or director of the agency had imposed a punishment that, reasonably, does not agree with the facts that gave rise to the complaint filed**. 1 LPRA § 172.

Law 32 authorizes the CIPA to receive evidence for the performance of its appeal function, as part of the administrative disciplinary process initiated in the Police or before any other agency of the Executive Branch whose officials are authorized to make arrests. 1 LPRA §§ 173-176. This means that the CIPA will examine the determination brought before its consideration, not only on the basis of the evidence presented at the informal hearing held by the agency concerned, but also on the evidence presented at the

appeal stage. Therefore, it has been recognized that the hearing before the CIPA is a *the novo* trial in which the Commission has the opportunity to listen again to all the evidence presented before the administrative authority against which it is appealed, or to receive other different evidence, and grant it the probative value that in its opinion deserve. The hearing held before the CIPA "is properly a formal hearing, because in it all the rights of the employee are definitively heard, at an administrative level [and in] this sense it is equivalent to a trial on its merits." Ramirez v. Policía de PR, 158 DPR 320, 334 (2003).

That is, the CIPA, as an appeal entity in the administrative sphere, is not subject to the rigid parameters of judicial review established by the Uniform Administrative Procedure Act of the Commonwealth of Puerto Rico, infra, since it has the power to receive evidence and make its own determinations of fact and conclusions of law on the matter it reviews on appeal. Arocho v. Policía de PR, supra, p. 772. The rules of evidence that prevail in the courts will not be mandatory in any procedure carried out before the CIPA. 1 LPRA § 173. In fact, it has been stated before that the actions of this agency resemble those of a court, due to the adjudication power that was delegated to it. For this reason, the examiner or commissioner who presides over the hearings must comply with the basic principles that govern judicial discretion. Díaz Marín v. Mun. de San Juan, 117 DPR 334, 338 (1986); Ramirez v. Policía de PR, *supra*, p. 341.

In addition, the law authorizes the CIPA to adopt the regulations necessary for the effective performance of its functions, in accordance with the

provisions of the Uniform Administrative Procedure Act, 3 LPRA, § 2101 et seq. These regulations will include rules on charging and appeal procedures. Art. 10, 1 LPRA § 180. For these purposes, the CIPA approved the Regulations for the Presentation, Investigation and Adjudication of Complaints and Appeals before the Investigation, Prosecution and Appeal Commission, Regulation No. 7952, of December 1, 2010.

C-

Regarding the *quantum* of proof in cases that deal with the expulsion of a public official, the CIPA may require a *quantum* more rigorous than the mere preponderance of evidence of the parties in conflict. This does not contradict the "reasonableness of the decision" as long as it is supported by substantial evidence that appears in the record, since the *amount* of proof required in the formal hearing is different from the standard of review.

As is known, ordinarily, the *quantum* of proof necessary to proving a case in the administrative field is that of preponderance of the evidence and not the intermediate *quantum* known as clear, robust and convincing or the most demanding, that of beyond a reasonable doubt that is imposed in criminal cases. Pagán Hernández v. UPR, 107 DPR 720, 749 (1978); Trib. Exam. Med. v. Cañas Rivas, 154 DPR 29, 36-37 (2001).

However, in In Re Caratini Alvarado, 153 DPR 575 (2001), the Supreme Court of Puerto Rico adopted the *quantum* of clear, robust an convincing evidence as that necessary to impose disciplinary sanctions against a lawyer for violation of the Code of Professional

Ethics. In that case, the Supreme Court was emphatic in pointing out the following:

> Disciplinary cases against members of the forum involve *their right to earn a living as lawyers*. For these purposes, it must be kept in mind that this Court—in *Amy v. Adm. Deporte hípico*, 116 DPR 414, 421 (1985)—resolved that the "right to a job, that is, to earn income and to have a fair and decent life, is a principle inalienable to man, pre-existing to the oldest of known constitutions. (Emphasis supplied).
>
> This being so —*and there being no controversy about the fact that in a disciplinary process the title of a lawyer, that is, the right to earn a living as such, is at stake* — we are of the opinion that the criterion to be used in this kind of situation should be the same as the one we use in *PPD v. Admor. Gen. de Elecciones, supra* [111 DPR 199 (1981)]; that is, "clear, robust and convincing evidence, not affected by exclusion rules or based on conjectures." (Emphasis supplied). Id., p. 227

Id., p. 585. (Emphasis in original).

Now, how is this intermediate *quantum* test set? As Professor Chiesa indicates "[t]he determination that the evidence in a case, although it satisfies the standard of preponderance of the evidence, does not satisfy the standard of clear, robust and convincing evidence, without identifying this with proof beyond a reasonable doubt, it is not easy at all. Ernesto L. Chiesa, Analysis del Término 2000-01 del Tribunal Supremo de Puerto Rico, 71 Rev. Jur. UPR 505 (2002).

Our Supreme Court expressed itself in a similar way when establishing that "[a]lthough the aforementioned standard of proof is not susceptible to a precise definition, clear, robust and convincing evidence has been described as **that evidence that produces in a trier of fact a lasting conviction that the factual contentions are highly probable.**" In Re Ramos Mercado, 165 DPR 630, 641 (2005); In Re Soto Charraire, 186 DPR 1019, 1028 (2012). (Emphasis supplied).

-D-

On the other hand, judicial review of final administrative determinations of the CIPA is carried out pursuant to the Uniform Administrative Procedure Law (hereinafter, LPAU), Law No. 170 of August 12, 1988, as amended, 3 LPRA §§ 2171 et seq. The LPAU provides that judicial review is limited to evaluating: (1) whether the remedy granted by the agency is adequate; (2) whether the findings of fact are supported by substantial evidence emerging from the entire record; and (3) whether the conclusions of law are correct, for whose scrutiny the reviewing forum has no limitation. 3 LPRA § 2175.

The factual determinations of the administrative entity will be sustained if they are based on the substantial evidence in the record, considered in its entirety. For these purposes, the concept of "substantial evidence" has been defined by the jurisprudence as relevant evidence that a reasonable mind could accept as adequate to support a conclusion. JP, Plaza Santa Isabel v. Cordero Badillo, 177 DPR 177, 186-187 (2009); Ramirez v. Dept. de Salud, 147 DPR 901, 905 (1999); Hilton Hotels v. Junta de Salario Mínimo, 74

DPR 670, 887 (1953). This does not require that, in light of the evidence in the record, the agency's decision reflects the only logical conclusion that a judger could reach. But neither will a determination supported by a mere flash of evidence be considered correct. The governing criterion in these cases will be the reasonableness of the agency's determination after considering the administrative file in its entirety. Pagán Santiago, et al v. ASR, 185 DPR 341, 358-359 (2012).

A party judicially challenging an administrative agency's factual determinations has the burden of proof to demonstrate that the findings are not based on the record or that the conclusions reached by the agency are unreasonable. Rebollo v. Yiyi Motors, 161 DPR 69, 77 (2004).

On the other hand, the legal conclusions will be reviewable in all their aspects by the reviewing forum. The courts, as experts in the law, do not have to give deference to the interpretations of legal norms made by administrative agencies. Olmo Nolasco v. Del Valle Torruella, 175 DPR 464, 469-470 (2009). However, it is a well-established rule that courts cannot lightly dismiss agency conclusions and interpretations. Torres Santiago v. Dept. de Justicia, 181 DPR 969, 1002-1003 (2011). On the contrary, they must give great weight and deference to the interpretations of administrative agencies of the laws and regulations they administer. Even in doubtful cases, and even when there may be a different interpretation of the laws and regulations they administer, "the agency's determination deserves substantial deference." JP, Plaza Santa Isabel v. Cordero Badillo, supra, p. 187; Assoc. Fcias. v. Caribe Specialty et al. II, 179 DPR 923, 940 (2010).

Based on what has been said, the procedures and decisions of administrative bodies are also covered by a presumption of regularity and correctness. The Sembler Co. v. Mun. de Carolina, 185 DPR 800, 821 (2012). Because of this, judicial review is limited to examining the reasonableness of the agency's actions. The reviewing court may intervene with the administrative forums when the decision adopted is not based on substantial evidence, or there has been an error in the application of the law, or when the action is arbitrary, unreasonable, illegal or affects fundamental rights. Caribbean Communication v. Pol. de P.R., 176 DPR 978, 1006 (2009). In short, the general rule established is that the decisions of administrative agencies must be considered with great deference by the appellate courts, due to their experience and specialized knowledge regarding the powers that have been delegated to them. JP, Plaza Santa Isabel v. Badillo Lamb, supra, p. 186.

III.

The Municipality of Carolina states that, in proceedings before the CIPA, in which the employment of a public official is at stake, the evidentiary standard of preponderance is the one that governs. That doesn't convince us.

This panel has been consistent in its determinations in promulgating that the *quantum* of evidence in cases of dismissal of a public employee is that of clear, robust and convincing evidence.[35] For this reason, we

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[35] See the rulings handed down by this same panel in cases KLRA201300687 (s. February 28, 2014); KLRA201400010 (s. April 30, 2014); KLRA201301086 (s. May 30, 2014); KLRA201400183 s. September 9, 2014); KLRA201400533 (s. 30

have been emphatic that the body has the power to require said standard of proof. That is, when the issue to be resolved is related to a disciplinary process and, with it, the right to work or to partially or permanently maintain the main source of support, regardless of whether the party complained against is a judge, a lawyer or a police, we have no doubt that the evidentiary standard has to be robust and not mere preponderance. It is firmly established in our jurisprudence that "[f]or the denial of a fundamental right, due process of law requires that the value and the sufficiency of the evidence is measured by the criterion of clear, robust and convincing evidence. Colón Pérez v. Televicentro de PR, 175 DPR 690, 725 n.30 (2009), citing PPD v. Admor. Gen. de Elecciones, 111 DPR 199, 223 (1981), and In re Caratini, supra.

Due to their relationship, we will address the second and third errors indicated together.

The Municipality argues that the serious misconduct (1) was committed to a greater degree and that there was proof of the serious misconduct (54) charged.[36] However, a careful analysis of the oral and documentary evidence fails to prove any degree of intention to defraud the treasury in the collection of hours not worked. Undoubtedly, municipal police officer

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September 2014); KLRA201500729 (s. Nov. 30, 2015); KLRA201501348 (s. January 29, 2016); KLRA201600524 (s. September 21, 2016) in which the same *amount* of proof is recognized when it comes to punishing a career employee in the public service with dismissal.

[36] Serious misconduct (34) was completely ruled out, even from the informal hearing, and this was demonstrated in the hearing on the merits, when it was stated beyond any doubt that the document was never altered.

Vázquez Pagán acted negligently, against ethical provisions, but he clarified under oath that it was an involuntary error. He even explained the origin of the discrepancy by admitting that he used his partner's attendance sheet. It should not be overlooked, furthermore, that registration during the patron saint's festivities was rushed and the schedule was irregular. Various recording methods were used: from a loose sheet to at least two books, that of the Polígono and that of Villa Esperanza. Furthermore, in more than a decade providing services to the Municipal Police, the respondent had never had a complaint like this. We agree with the determination of the CIPA that when completing the attendance sheet there was negligence and not the degree of intentionality that the text of serious misconduct (54) entails. Regarding this particular allegation, there was not even preponderance of evidence.

Upon concluding that the serious offense (1) was committed and in accordance with the Municipal Police Regulations, which provide various types of sanctions, the CIPA modified the dismissal to a suspension of employment and salary of ninety days, because this was more proportional to the imputed and proven fault. His determination, based on the evidence presented, was reasonable. The mistakes were not made.

Finally, the Municipality alleges that the CIPA erred by omitting to include certain facts, namely: (a) the existence of two entry and exit books in the relevant work period; (b) that in those books the attendance of the municipal police officers who worked at the patron saint's festivities was noted; (c) that agent Vázquez Pagán gave a sworn statement; (d)

that the respondent lied when he said that there were no record books; (e) that there is no determination of the credibility of the municipal police officer Vázquez Pagán because he did not testify at the hearing.

In accordance with our legal system, when challenging the administrative body's assessment of the evidence, it must be supported by other relevant evidence that undermines the reasonableness of the appealed decision. The Municipality of Carolina did not explain how the aforementioned facts reduce the probative value of the evidence that the CIPA took into account. The sworn statement of the respondent is part of the administrative file and it is precisely there where he admits the commission of the serious offense (1), for which the sanction of suspension of three months was ordered. As we already mentioned, neither from the testimonial evidence brought by the Municipality nor from the entire administrative record can it be inferred that there was the degree of intention that would warrant the expulsion of the respondent. It is known that if there is substantial evidence to support the determinations of fact, the conclusions of law are reasonable and there is no manifest error, prejudice or bias, this reviewing forum should not intervene with the determination adopted in the administrative forum.

The appellant did not defeat the deference that the decision issued by the CIPA deserves. The Municipality did not demonstrate that there was other evidence in the administrative file that undermines the probative value of the substantial evidence on which the appealed resolution is based. Nor could it establish that an erroneous interpretation of the applicable law had been incurred.

Therefore, the appealed resolution must be confirmed.

IV.

For the reasons expressed, which we make part of this ruling, we confirm the appealed resolution.

It was agreed upon by the Court and certified by the Secretary of the Court of Appeals.

Dimarie Alicea Lozada
Secretary of the Court of Appeals

APPENDIX N
MINUTES OF THE MEETING OF VIVIAN VÉLEZ VERA AND MARÍA RODRÍGUEZ SIERRA WITH GÉNESIS VÉLEZ FELICIANO (MAY 24, 2018)

MINUTES OF THE MEETING OF VIVIAN VÉLEZ VERA AND MARÍA RODRÍGUEZ SIERRA WITH GÉNESIS VÉLEZ FELICIANO (MAY 24, 2018)

Minute Meeting Student Génesis Vélez
Course Dr. Luis Arana Mate 3012 M25
Academic Senate
3:40 pm

Prof. Vivian Y. Vélez Vera, Interim Dean together with Dr. María C. Rodríguez Sierra, Interim Dean of Students talk with the Ms. Génesis Vélez about the comments that she alleges were consistent and in bad taste in the classroom from Dr. Luis Arana.

Professor Vélez Vera tells Génesis Vélez Feliciano that the student Oscar O. Rivera expressed this morning, May 24, 2018 at 9:30 am that there was a student in the classroom of the aforementioned course who felt affected and harassed by Dr. Luis Arana. I asked Oscar O. Rivera to inform the student that she should immediately come to talk to me today. Given the allegations, it is clear that the student in question is her, Génesis Vélez Feliciano.

As Ms. Vélez Feliciano is aware, the Deans were at the meeting with the Group of this MATE 3012 M25 Course half an hour before and all the students verbalized that Dr. Arana makes consistent comments towards Génesis, which they understand are inappropriate. Very specifically, they stated that Dr. Arana always indicated that Génesis Vélez is the only student who had voltage to be in the class. That he required Génesis Vélez to always be near Dr. Arana in the classroom.

At the time that the students unanimously expressed these concerns, we asked Ms. Génesis Vélez Feliciano to speak with both Deans, after the meeting had finished. Ms. Génesis Vélez Feliciano accepted and expressed the following:

1) She changed seats in the classroom and Dr. Arana told her that she should be in front.

2) That he always called her to solve mathematical problems in the classroom, since Dr. Arana emphasizes that he solves them in his mind.

3) That she seems to like strong men and expensive cars. Comments expressed frequently.

4) That he continually expresses, whether she believes her boyfriend can solve his mental problems.

5) That on one occasion he approached her almost right in her face. That is, his face to hers.

6) That Dr. Arana reports that she seems to like parties.

7) Student Génesis Vélez Feliciano indicates that she is interested in formally filing a complaint.

8) Ms. Génesis Vélez Feliciano expresses that she has not personally expressed to Dr. Luis that these gestures and expressions of him bother her because she feels afraid.

9) Ms. Génesis Vélez Feliciano expresses on several occasions that these gestures and expressions are not welcomed.

The Student was informed that the Rector would be informed immediately to activate the corresponding protocol. Ms. Génesis Vélez would be visiting the Dean of Academic Affairs to read the minutes and would

sign it as the document of origin of her complaint on or before Tuesday, May 29, 2018. The Interim Dean of Academic Affairs and the Interim Dean of Students would be notifying the Student Attorney for the corresponding protocols.

The meeting ends at 4:10 pm

/s/ Génesis Vélez Feliciano

APPENDIX O
TESTIMONY OF DAVID UREÑA NEGRÓN DECLARING ABOUT THE CHANGE OF GRADES IN THE COURSE—RELEVANT EXCERPTS (OCTOBER 30, 2019)

SPANISH

ENGLISH

TESTIMONY OF DAVID UREÑA NEGRÓN DECLARING ABOUT THE CHANGE OF GRADES IN THE COURSE— RELEVANT EXCERPTS (OCTOBER 30, 2019)

[Spanish Transcript Excerpts; Pg. 65]

R Primero cuando fuimos a llevar la carta fue con Vivian. Con Vivian . . . estábamos nosotros y Vivian; fuimos Óscar y yo a llevar la carta. Estaba mas que Vivian, pero luego hubo una reunión aquí mismo, en el Senado, donde estaba María Rodríguez, que ella era decana de Estudiantes, creo que era. Estaba el profesor Bauzá, estaba la procuradora, estaba Vivian y nosotros, y todos los estudiantes.

P ¿Qué respuesta ustedes tuvieron, usted tuvo de la Universidad con respecto a su reclamación?

R Bueno, en parte de lo académico, pues nos presentaron unas opciones, que nosotros decidimos, pues que todos íbamos a pasar el curso con "C", con una nota promedio. Y con Génesis, pues nos explicaron que, pues, se iba a trabajar ese caso aparte con ella.

SR. LUIS ARANA SANTIAGO:

Perdón. No escuché esa parte. ¿Podría decirlo un poquito más alto?

OFICIAL EXAMINADOR:

Licenciado, le vamos a solicitar que cualquier planteamiento se haga a través del abogado. Si el licenciado, pues no escucha, ¿verdad?

LCDO. CARLO RIVERA TURNER:

Si lo puede, si lo puede repetir.

[Transcript Excerpts; Pg. 66]

TESTIGO:

Pues decidieron, ¿sabe?, nos pusieron "C" a todos en la clase, una nota promedio. Y pues, con Génesis, pues dijeron que iban a trabajar el asunto con ella.

POR EL LCDA. BEATRIZ TORRES TORRES:

P ¿Posterior a, a esta situación usted tuvo algún tipo de comunicación con el personal de la Universidad?

R No, después de que yo, pues, yo terminé el semestre yo me fui a Arecibo y ahí no vuelvo a tener comunicación con ellos hasta que nos indicaron que había un proceso que estaba corriendo por lo de Génesis.

P Le pregunto, ¿alguien a usted, alguien a usted lo forzó o lo coaccionó a tomar...?

LCDO. CARLO RIVERA TURNER:

Tenemos reparo, Juez. Sugestivo.

LCDA. BEATRIZ TORRES TORRES:

No estamos siendo sugestivo. Estamos haciéndole una pregunta...

LCDO. CARLO RIVERA TURNER:

De . . . La próxima pregunta se va a contestar con un "sí" o con un "no".

[English Transcript Excerpts; Pg. 65]

A First when we went to take the letter it was with Vivian. With Vivian . . . it was us and Vivian; Oscar and I went to bring the letter. I was there only Vivian, but then there was a meeting right here, in the Senate, where María Rodríguez was, who was the dean of Students, I think she was. There was Professor Bauzá, there was the Student Attorney, there was Vivian and us, and all the students.

Q What response did you have from the University regarding your claim?

A Well, in the academic part, they presented us with some options, which we decided, that we were all going to pass the course with a "C", with an average grade. And with Génesis, they explained to us that, well, they were going to work on that separate case with her.

MR. LUIS ARANA SANTIAGO:

Sorry. I didn't hear that part. Could you say it a little louder?

EXAMINING OFFICER:

Attorney, we are going to request that any approach be made through the lawyer. If the lawyer, well, doesn't listen, right?

LCDO. CARLO RIVERA TURNER:

If you can, if you can repeat it.

[English Transcript Excerpts; Pg. 66]

WITNESS:

Well, they decided, you know, they gave us all a "C" in the class, an average grade. And then, with Genesis, well they said they were going to work on the matter with her.

BY ATTY. BEATRIZ TORRES TORRES:

Q After this situation, did you have any type of communication with the University staff?

A No, after I, well, I finished the semester I went to Arecibo and there I did not have communication with them again until they told us that there was a process that was underway regarding Genesis.

Q I ask you, did anyone force or coerce you to take . . . ?

LCDO. CARLO RIVERA TURNER:

We have objections, Judge. Suggestive.

ATTY. BEATRIZ TORRES TORRES:

We are not being suggestive. We are asking him a question . . .

ATTY. CARLO RIVERA TURNER:

From . . . The next question will be answered with a "yes" or a "no".

APPENDIX P
URL OF COMMONWEALTH OF PUERTO RICO JUDICIAL CASES CITED

URL OF COMMONWEALTH OF PUERTO RICO JUDICIAL CASES CITED

Ángel Pagán v. Mun. Aut. De Carolina, KLRA201501253 (https://dts.poderjudicial.pr/ta/2016/KLRA201501253-15122016.pdf)

Comisionado de Seguros de Puerto Rico v. Real Legacy Ass. Co., 179 D.P.R. 602 (2010), 2010 TSPR 142 (https://dts.poderjudicial.pr/ts/2010/2010tspr142.pdf)

El Pueblo de P.R. v. David Méndez Rivera, 2013 TSPR 26 (https://dts.poderjudicial.pr/ts/2013/2013tspr26.pdf)

Ex Agente José L. Torres v. Policía de P.R., 2016 TSPR 224 (https://dts.poderjudicial.pr/ts/2016/2016tspr224.pdf)

Ex Pm Ángel Vázquez Pagán v. Pol. de P.R., KLRA201501253 (https://dts.poderjudicial.pr/ta/2016/KLRA201501253-15122016.pdf)

Ex Sgto. Ángel D. Hernández v. Pol. de P.R., KLRA201601162 (https://dts.poderjudicial.pr/ta/2018/KLRA201601162-31012018.pdf)

Ex. Agente Joel Algea Resto v. Policía de P.R., KLRA201401312 (https://dts.poderjudicial.pr/ta/2015/KLRA201401312-19032015.pdf)

In re: Rebeca Rodz. Mercado, 2005 TSPR 144 (https://dts.poderjudicial.pr/opiniones/2005/2005tspr144.pdf)

Méndez Jiménez, et al. v. Carso Construction of Puerto Rico, LLC, et al., 2019 TSPR 99 (https://dts.poderjudicial.pr/ts/2019/2019tspr99.pdf)

OEG v. Manuel B. Martínez Giraud, 2022 TSPR 93 (https://dts.poderjudicial.pr/ts/2022/2022tspr93.pdf)

Ofic. del Comisionado de Seguros v. Asociación de Empleados del E.L.A., 2007 TSPR 112 (https://dts.poderjudicial.pr/ts/2007/2007tspr112.pdf)

P.P.D. v. Admor. Gen. de Elecciones, 111 D.P.R. 199 (1981) (https://cite.case.law/pr-dec/111/199/)

Universidad de Puerto Rico en Aguadilla v. José Lorenzo Hernández, 2012 TSPR 57 (https://dts.poderjudicial.pr/ts/2012/2012tspr57.pdf)

Víctor Roldán Torres v. M. Cuebas, Inc., et al., 2018 TSPR 18 (https://dts.poderjudicial.pr/ts/2018/2018tspr18.pdf)

William Pérez Vargas v. Office Depot / Office Max. Inc., 2019 TSPR 227 (https://dts.poderjudicial.pr/ts/2019/2019tspr227.pdf)

APPENDIX Q
CERTIFICATE OF TRANSLATION BY PETITIONER

CERTIFICATE OF TRANSLATION BY PETITIONER

CERTIFICATE

I, Luis S. Arana, Petitioner, hereby certify that I have translated the documents listed below according to the originals in my record, and that the translations are accurate to the best of my abilities. I lived in the continental USA for about fourteen years and consider myself proficient in the English language. The documents are:

A Administrative Resolution (Dec 20 2019)

B Denial by the Court of Appeals of Puerto Rico of Petitioner's motion for Reconsideration (6/22/2023)

C Denial by the Supreme Court of Puerto Rico of Petitioner's writ of Appeal (10/6/2023)

D Denial by the Supreme Court of Puerto Rico of Petitioner's first motion for Reconsideration (11/17/2023)

E Denial by the Supreme Court of Puerto Rico of Petitioner's second motion for Reconsideration (2/2/2024)

F Writ of Judicial Review submitted to the Court of Appeals of Puerto Rico, Errors No. 3 and 11 (Jul 14 2021)

G Motion for Reconsideration submitted to the Court of Appeals of Puerto Rico (6/22/2023)

H Petitioner's Writ of Appeal submitted to the Supreme Court of Puerto Rico (7/20/2023), Errors No. 2, 6 and 8

I Formulation of Charges (Oct 12 2018)

J Certification 40 (2015-2016)

K Case KLRA201501253: Ex Pm Ángel Vázquez Pagán v. Municipio de Carolina

L Minutes of the Meeting of Vivian Vélez Vera and María Rodríguez Sierra with Génesis Vélez Feliciano, held on May 24, 2018

M Excerpts from the testimony of David Ureña Negrón declaring about the change of grades in the Course

Note: I translated all documents listed above since my financial capabilities have been uncertain after my dismissal from the University of Puerto Rico. However, if the Court orders the translations to be made by a third party, I certainly will comply.

Certification 130 (2014-2015) was taken from:[1] https://www.upr.edu/cayey/wp-content/uploads/sites/10/2017/01/130-2014-2015-Policy-Sexual-Harassment-UPR-1.pdf

/s/ Luis S. Arana

[1] Cayey is a campus of the University of Puerto Rico.

SUPREME COURT
PRESS