

April 1, 2016

Rafael Roman Melendez
Secretary of Education
Puerto Rico Department of Education
P. O. Box 190759
San Juan, Puerto Rico 00919-0759

Re: Case No. 02-16-1005
Puerto Rico Department of Education

Dear Secretary Roman Melendez:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the Puerto Rico Department of Education (PRDOE). The complainant alleged that PRDOE discriminated against his daughter (the Student), on the basis of her disability, by failing to provide the Student with XXXXXXXX XXXXXXX XXXXX¹ as required by the Student's Programa Educativo Individualizado (PEI)² from XXXXXXXXX to the present.

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

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires recipients to provide a free, appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction. The provision of an appropriate education is the provision of regular

¹ The complainant initially alleged that the PRDOE failed to provide the Student with XXXXXXXXs; however, during the course of OCR's investigation, the complainant clarified that his allegation pertained to XXXXXXXXXX.

² An Individualized Education Program (IEP) is referred to as a PEI in Puerto Rico.

or special education and related aids and services that are (i) designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met; and (ii) based upon adherence to procedures that satisfy the evaluation and placement requirements of §§ 104.34, 104.35 and 104.36. The regulation implementing Section 504, at §104.33(b)(2), states that the implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting the requirement to provide regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled student.

OCR interviewed the complainant during the course of the investigation. OCR also reviewed documentation that the complainant and the PRDOE submitted.

OCR determined that the Student is XXX years old and in the XXXXXXXX grade at the XXXXXXXXXXXXXXXX (the School) located in XXXXXXXXX, Puerto Rico. During school year XXXXXXXXXXXX, the PRDOE classified the Student as XXXXXXXXXXXX, as she was diagnosed with XXXXXXXXXXXXXXXXXXXXXXXX.

The complainant alleged that the PRDOE discriminated against the Student, on the basis of her disability, by failing to provide the Student with XXXXXXXXXXXXXXXXXXXX, as required by the Student's PEI, from XXXXXXXXXXXXXXXX to the present. The Student's PEI for school year XXXXXXXX, dated XXXXXX, included a provision requiring the School to provide the Student with XXXXXXXXXXXXXXXXXXXX once per week for a XXX minute session. The PRDOE acknowledged that the Student has not received XXXXXXXXXXXXXXXXXXXX from XXXXXXXX to the present.

Based on the above, OCR determined that there was sufficient evidence to substantiate that the PRDOE violated the regulation implementing Section 504, at 34 C.F.R. § 104.33, by failing to provide the Student with XXXXXXXXXXXXXXXXXXXXXXXX, as required by the Student's PEI for school year XXXXXXXX.

On March 30, 2016, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified in this complaint. OCR will monitor the implementation of the resolution agreement.

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

Please be advised that the PRDOE may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Jeanette Tejada Bustos, Compliance Team Attorney, at (646) 428-3777 or jeanette.tejadabustos@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXXXX, Esq.