

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION II  
32 OLD SLIP, 26th FLOOR  
NEW YORK, NY 10005-2500

REGION II  
NEW JERSEY  
NEW YORK  
PUERTO RICO  
VIRGIN ISLANDS

September 30, 2015

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

Re: Case No. 02-14-1010  
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) regarding the above-referenced complaint filed against the Puerto Rico Department of Education (PRDOE). The complainant alleged that the PRDOE discriminated against students with disabilities, by failing to provide them with accessible restrooms at the Judith A. Vivas School (the School).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). 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 educational system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR reviewed information that the PRDOE and the complainant submitted. OCR also conducted an on-site inspection of School facilities.

The complainant alleged that the PRDOE discriminated against students with disabilities, by failing to provide them with accessible restrooms at the School. The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that no qualified individual with a disability shall,

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness  
by fostering educational excellence and ensuring equal access.*  
[www.ed.gov](http://www.ed.gov)

because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies. The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

OCR determined that the School building was constructed in 1988 and the PRDOE leases the property. The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as "new construction." Accordingly, OCR determined that the School's restrooms are new construction under the regulation implementing Section 504.<sup>1</sup> The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. Pursuant to the regulation implementing Section 504, for buildings constructed on or after June 3, 1977, but prior to January 18, 1991, recipients must be in compliance with the American National Standards Institute's accessibility standards (ANSI) or equivalent standards.

The PRDOE acknowledged that the boys' and girls' restrooms located on the first floor of the School are not readily accessible to and usable by individuals with disabilities. The attached appendix details the compliance issues OCR identified regarding the accessibility of the restrooms, which the PRDOE must rectify in order to make the restrooms readily accessible to and usable by individuals with disabilities.

On September 29, 2015, the PRDOE agreed to implement the enclosed resolution agreement to address the compliance issues that OCR identified. OCR will monitor the implementation of the resolution agreement. If the PRDOE fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

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 complainant 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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

---

<sup>1</sup> Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered "new construction". Accordingly, the School's restrooms are "existing facilities" under the ADA.

If you have any questions about OCR's determination, please contact Jeanette Tejada Bustos, Compliance Team Attorney, at (646) 428-3777 or [jeanette.tejadabustos@ed.gov](mailto:jeanette.tejadabustos@ed.gov); or Genara Necos, Compliance Team Attorney, at (646) 428-3828 or [genara.necos@ed.gov](mailto:genara.necos@ed.gov); or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or [nadja.r.allen.gill@ed.gov](mailto:nadja.r.allen.gill@ed.gov).

Sincerely,

"/s/

Timothy C. J. Blanchard

Encl.

cc: xxxxx xxxxxxxx, Esq.