



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION II

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NEW JERSEY  
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PUERTO RICO  
VIRGIN ISLANDS

June 30, 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. 02-14-1502  
Puerto Rico Department of Education

Dear Secretary 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 (the PRDOE). The complainant alleged that the PRDOE discriminated against her son (the Student), on the basis of his disability, by failing to provide the Student with the following related aids and services required by his Programa Educativo Individualizado (PEI)<sup>1</sup>: transportation to and from school and a one-to-one aide in school, from XXXXX, 2014, to XXXXX, 2014 (Allegation 1); assistive technology, psycho-educational, and speech/language evaluations during school year 2014-2015 (Allegation 2); and appropriate transportation to school for breakfast and lunch from XXXX 2014 until mid-XXXX 2015 and during extended school year in XXXX 2015 (Allegation 3).

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.

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

OCR determined that during school year 2014-2015, the Student was a 12-year old second grade student diagnosed with Down's Syndrome. The Student attended classes for all academic subjects at a private placement school, the XXXXX XXXXX (the School).

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<sup>11</sup> An Individualized Education Program (IEP) is referred to as a PEI in Puerto Rico.

With respect to Allegation 1, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with transportation to and from the School and a one-to-one aide in the School from XXXX 2014, to XXXX 2014, as required by his PEI. The PRDOE acknowledged that these related aids and services were not provided during the time period in question. During the course of OCR's investigation, the PRDOE provided to OCR the minutes from the Student's Comite de Planificacion y Ubicacion (COMPU) meeting held on May 27, 2015, which the complainant attended. At the meeting, the COMPU determined that the Student would receive extended school year (ESY) services from XXX 2015 through XXXX 2015 to compensate the Student for not having a one-to-one aide or transportation services from XXXXX 2014, until XXXXX 2014. The complainant advised OCR that this resolved Allegation 1. Accordingly, OCR will take no further action regarding Allegation 1.

With respect to Allegation 2, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with assistive technology, psycho-educational, and speech/language evaluations during school year 2014-2015, as required by his PEI. OCR determined that the Student's PEI did not specify that the PRDOE was required to conduct assistive technology, psycho-educational, or speech/language evaluations for the Student during school year 2014-2015; however, the PRDOE acknowledged that the COMPU agreed to provide these evaluations. During the course of OCR's investigation, the complainant acknowledged that the Student received the outstanding assistive technology, psycho-educational, and speech/language evaluations during school year 2014-2015. The complainant stated to OCR that she considered Allegation 2 resolved. Accordingly, OCR will take no further action regarding Allegation 2.

With respect to Allegation 3, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with appropriate transportation to school for breakfast and lunch from 2014 until 2015 and during ESY services in XXX 2015, as required by his PEI. The complainant asserted that because the PRDOE failed to provide the Student with transportation to school for breakfast and lunch, she made the Student's breakfast and lunch, daily. OCR determined that the Student's PEI for school year 2014-2015, dated, 2014, stated that the PRDOE would provide the Student with transportation to a different school (School 2) to receive his breakfast and lunch.<sup>2</sup>

OCR determined that the PRDOE failed to provide the Student with transportation to School 2 for breakfast and lunch meals as follows: for 21 days in 2014; for 16 days in 2014; for 13 days in 2014; for 15 days in 2014; for 13 days in 2015; for 10 days in 2015; for 9 days in 2015; and for 20 days in XXXX 2015. The PRDOE did not provide, nor did OCR find, any evidence indicating that the PRDOE compensated the complainant for the meals she provided to the Student when the PRDOE failed to provide transportation for the Student to School 2 for meals in accordance with the Student's PEI, between 2014 through 2015. OCR determined that the PRDOE provided breakfast and lunch at the School to other PRDOE students at a cost of XXXX per meal.

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 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 implementation of a PEI is one means of meeting this requirement.

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<sup>2</sup> The complainant informed OCR that the Student receives dietary/nutrition accommodations; and as such, PRDOE agreed to transport the Student daily for breakfast and lunch.

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 transportation to School 2 for breakfast and lunch meals from 2014 until 2015 and during ESY services in XXX 2015, as required by his PEI.

On June 21, 2016, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified with respect to Allegation 3. 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 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 should occur, the complainant may file a separate complaint alleging such harassment or intimidation.

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

If you have any questions, please contact 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

cc: XXXXXXXX XXXXXXXX, Esq.