

## **RESOLUTION AGREEMENT**

### **Puerto Rico Department of Education OCR Case No. 02-15-1228**

In order to resolve Case No. 02-15-1228, the Puerto Rico Department of Education (the PRDOE) assures the U.S. Department of Education, New York Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of 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; and Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35.

#### **ACTION ITEM 1:**

The complainant has informed OCR that she and the Student intend to return to Puerto Rico in or around July 2016; and that upon their return, she intends to enroll the Student in the PRDOE schools for school year 2016-2017. If the Student re-enrolls as a student of the PRDOE for school year 2016-2017, within 60 days of the Student's re-enrollment, the PRDOE will convene a meeting of a group of persons knowledgeable about the Student (such as the COMPU) to determine whether any remedial and/or compensatory services would be an appropriate part of the Student's individual educational plan for school year 2016-2017, due to any lapses in or changes to the provision of the Student's services assistant during school year 2014-2015; and if so, develop a plan for providing those services. The PRDOE will invite the complainant to attend this meeting. The completion date for providing any remedial or compensatory services should not extend beyond June 30, 2017.

#### **REPORTING REQUIREMENTS:**

- a. Within 15 days of the meeting held pursuant to Action Item 1 above, the PRDOE will provide to OCR a summary of the meeting, including a description of decisions made; the plan for providing any remedial and/or compensatory services to the Student, if determined necessary; and documentation demonstrating that the PRDOE provided notice of and invited the complainant to the meeting. OCR will review the documentation submitted to ensure that the PRDOE met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.
- b. By July 15, 2017, the PRDOE will provide documentation to OCR demonstrating that it provided the Student with any remedial or compensatory services that were deemed necessary. The documentation will include the dates, times, and locations that services were provided; a description of services provided; and, the name(s) of the service provider(s).

**ACTION ITEM 2:**

By October 31, 2015, a PRDOE administrator will review the actions of Facilitator 1, to determine whether Facilitator 1 retaliated against the complainant for the complainant's advocacy on behalf of the Student with respect to Facilitator 1's directive to the Student's temporary services assistant on February 25, 2015, and the civil complaint she filed against the complainant on February 27, 2015. If the PRDOE determines that retaliation occurred, PRDOE will determine whether disciplinary action is appropriate, and will take any necessary disciplinary action against Facilitator 1 by November 30, 2015.

**REPORTING REQUIREMENTS:**

- a) By November 15, 2015, the PRDOE will provide documentation to OCR for review and approval demonstrating that the PRDOE administrator reviewed the actions of Facilitator 1 in accordance with Action Item 2 above. The documentation will include, at a minimum, a description of the process the PRDOE administrator utilized to conduct the review; the administrator's recommendation regarding whether Facilitator 1's actions warrant disciplinary or other action, and why; and, the action taken by the PRDOE on the administrator's recommendation. The PRDOE will also identify, by name and title, the administrator involved in making the determination.
- b) If disciplinary or other action will be taken, then by November 30, 2015, the PRDOE will provide documentation to OCR demonstrating implementation of the action.

**ACTION ITEM 3:**

The PRDOE provided OCR with documentation indicating that the PRDOE provided training in or around August 2015 to all XXXXXXXX XXXXX XXXXXXXXX School staff and administrators, and XXXXXXX District Facilitators for Special Education, regarding the PRDOE's obligations pursuant to Section 504 and the ADA, and the prohibitions regarding retaliation. By September 30, 2016, PRDOE will provide refresher training regarding the PRDOE's obligations pursuant to Section 504 and the ADA and the prohibitions regarding retaliation to all XXXXXXXX XXXXX XXXXXXXXX School staff and administrators, and XXXXXXX District Facilitators for Special Education. Specifically, the training will include instruction regarding the PRDOE's responsibility to provide a free appropriate public education (FAPE) under the regulation implementing Section 504, at 34 C.F.R. §104.33; and the responsibility of PRDOE staff to provide the educational and other related aids and services that the COMPU or other Section 504 teams identify as appropriate for meeting the student's individual educational needs. The training should also cover the prohibition against retaliating against a student's parents/guardians because they have engaged in protected activities, such as advocating on behalf of their children for the rights guaranteed by the regulations enforced by OCR. The training regarding retaliation will also include a discussion of the following: (a) what constitutes a protected activity; (b) the prohibition against adverse actions in response to those protected activities; (c) recognizing acts of retaliation and intimidation, and their effects on individuals who engaged in protected activities; and (d) that effective action, including

disciplinary action where appropriate, will be taken against administrators or staff found to have engaged in retaliatory conduct.

**REPORTING REQUIREMENT:** By October 31, 2016, the PRDOE will provide documentation to OCR demonstrating that training was provided consistent with Action Item 3 above, including (a) the name(s) of the individual(s) who conducted the training; (b) a list of the individuals who attended the training and their positions; (c) the date(s) the training was conducted; and, (d) copies of any training materials disseminated.

The PRDOE understands that OCR will not close the monitoring of this agreement until OCR determines that the PRDOE has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§104.33 and 104.61; and the ADA, at 28 C.F.R. § 35.134, which were at issue in this case. The PRDOE also understands that by signing this agreement, it agrees to provide data and other information in a timely manner. Further, the PDROE understands that during the monitoring of this agreement, OCR may visit the PRDOE, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the PRDOE has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.33 and 104.61; and the ADA, at 28 C.F.R. § 35.134, which were at issue in this case. The PRDOE understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the PRDOE written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

October 14, 2015  
Date

/s/  
Daiber Carrión  
Special Assistant  
Special Education Secretariat  
Puerto Rico Department of Education