



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

February 16, 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. 02-15-1429
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 the PRDOE discriminated against her XXXX (the Student), on the basis of his disability, by failing to provide the Student with: XXXXXXXXX XXXXXX equipment (Allegation 1); a XXXXXX XXXXXXX evaluation (Allegation 2); a XXXXXXXX XXXXXXXX therapy evaluation (Allegation 3); a XXXXXX XXXXXX evaluation (Allegation 4); and breakfast and lunch meals¹ (Allegation 5), as required by his Programa Educativo Individualizado (PEI) during school years 2014-2015 and 2015-2016.

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 or special education and

¹ During the course of OCR's investigation, the complainant asserted that in addition to lunch meals, the PRDOE was required to provide the Student with breakfast meals.

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 Individualized Education Program (IEP)² 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.

In its investigation, OCR interviewed the complainant. OCR also reviewed documentation that the complainant and the PRDOE submitted. OCR made the following determinations.

During school year 2014-2015, the Student was a XXX year old XXXXXX grade student diagnosed with XXXXXX. The Student attended classes for all academic subjects at a private placement school, the XXXXXX (the School), and was eligible to receive special education and related aids and services pursuant to a PEI for school year 2014-2015, dated XXXXXX, as well as amendments to the PEI made on or about XXXXXX and XXXXXX.

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 XXXXXXXXX equipment, as required by his PEIs, from XXXXX through XXXXX.

The Student's PEI for school year 2014-2015, dated XXXXXX, and the amendment to the PEI, dated XXXXXX (the XXXXXX PEI Amendment), stated that the Student would receive the following XXXXXX equipment: (1)XXXXXX; (2) XXXXXX; (3) XXXXXX; (4) XXXXXX; (5) XXXXXX; and (6) XXXXXX. During the course of OCR's investigation, the PRDOE provided OCR with a document dated XXXXXX, which the complainant signed, confirming the Student had received all of the XXXXXX equipment specified in his PEI. On XXXXXX, the complainant also confirmed to OCR that the PRDOE had provided the Student with the XXXXXX and that her allegation was resolved. Therefore, OCR determined that the allegation is resolved, and there are no systemic allegations appropriate for investigation. 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 a mandated XXXXXX evaluation, as required by his PEIs, from in or around XXXXXX through XXXXXX.

The Student's PEI for school year 2014-2015, dated XXXXXX, and the amendment to the PEI, dated XXXXXX (the XXXXXX PEI Amendment) stated that the PRDOE would provide the Student with a XXXXXX evaluation. OCR determined that a XXXXXX evaluation for the Student was supposed to have been conducted in or around XXXXXX; however, it has not been conducted to date. The PRDOE informed OCR that it is currently in the process of scheduling the evaluation. The PRDOE stated that on or about XXXXXX, the PRDOE representative assigned to the Student's PEI team notified the complainant via electronic mail (email) message that the PRDOE had scheduled an appointment for the Student to receive a XXXXXX evaluation with a XXXXXX specialist who had experience working with students with XXXXXX for XXXXXX. The PRDOE did not provide any information to explain why the evaluation was not scheduled prior to XXXXXX. OCR determined that the Student's XXXXXX XXXXXX evaluation did not occur on XXXXXX, because the PRDOE did not send the XXXXXX the documentation XXXX needed to conduct the Student's evaluation.

² An IEP is referred to as a PEI in Puerto Rico.

Based on the above, OCR determined that there was sufficient evidence to substantiate the complainant's allegation that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with a XXXXXXXX XXXXXXXX evaluation, as required by his PEIs, from in or around XXXXXXX through XXXXXXX. Accordingly, OCR determined that the PRDOE failed to comply with the regulation implementing Section 504, at 34 C.F.R. §§ 104.33 and 104.35.

On February 16, 2016, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 2. OCR will monitor the implementation of the resolution agreement.

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 a mandated XXXXXX XXXXXX evaluation, as required by his PEIs, from in or around XXXXX through XXXXXXX.

The Student's PEI for school year 2014-2015, dated XXXXXXXX, and the XXXXXXXX PEI Amendment, stated that the PRDOE would provide the Student with a XXXXXXXX XXXXXXXX therapy evaluation. The PRDOE confirmed that it has not conducted a XXXXXXXX XXXXXXXX therapy evaluation for the Student to date, but asserted that it provided the complainant the opportunity to obtain an outside evaluation.

OCR determined that pursuant to a consent decree reached in a class action lawsuit against the PRDOE, the PRDOE contracts with Remedio Provisional, a quasi-independent entity, to provide certain related aids and services, including XXXXXXXX therapy evaluations, to students. Upon receipt of documentation from Remedio Provisional, parents are permitted to contact providers identified by Remedio Provisional to provide services. OCR determined that in a letter XXXXXXXX, Remedio Provisional approved the Student to receive a XXXXXXXX XXXXXXXX therapy evaluation and identified a list of approved XXXXXXXX therapists. The complainant stated that she thereafter contacted the providers, but none of the XXXXXXXX therapists Remedio Provisional identified are XXXXXXXX.³

Based on the above, OCR determined that there was sufficient evidence to substantiate the complainant's allegation, that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with a XXXXXXXX XXXXXXXX therapy evaluation, as required by his PEIs, from in or around XXXXXXX through XXXXXXX. Accordingly, OCR determined that the PRDOE failed to comply with the regulation implementing Section 504, at 34 C.F.R. §§ 104.33 and 104.35.

On February 16, 2016, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 3. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 4, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with a mandated XXXXX XXXXX evaluation for school year 2014-2015, as required by his PEIs, from in or around XXXXX through XXXXX.

OCR determined that pursuant to the Student's PEI and special education placement, the PRDOE was required to conduct a XXXXX XXXXX evaluation once the Student turned XXXXX years of age on XXXXX XXXXX. The complainant stated that during the PEI meeting, held in or around XXXXX, the Comité de

³ The complainant informed OCR that she independently identified a provider who is willing to conduct the Student's XXXXX XXXXX therapy evaluation; however, the provider is in XXXXX, Puerto Rico, which is a long distance from the complainant's home in XXXXX, Puerto Rico, and the complainant is unable to travel to XXXXX with the Student.

Programación y Ubicación, (COMPU) determined that the specific evaluator identified by the complainant should conduct the Student's XXXXXX XXXXXX evaluation.

The PRDOE informed OCR that it is in the process of scheduling this evaluation with the evaluator, but has not scheduled the evaluation to date. The complainant informed OCR that she is waiting for the PRDOE to contract with the selected evaluator to provide the Student's XXXXXX XXXXXX evaluation.

Based on the above, OCR determined that there was sufficient evidence to substantiate the complainant's allegation that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with a XXXXXX XXXXX evaluation, as required by his PEIs, from in or around XXXXXX through XXXXXX. Accordingly, OCR determined that the PRDOE failed to comply with the regulation implementing Section 504, at 34 C.F.R. §§ 104.33 and 104.35.

On February 16, 2016, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 4. OCR will monitor the implementation of the resolution agreement.

With respect the Allegation 5, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with breakfast and lunch meals, from in or around XXXXXX through XXXXXX, as required by his PEI. The complainant asserted that because the PRDOE failed to provide the Student with breakfast and lunch meals during school year 2014-2015, she paid for the Student's breakfast and lunch meals during school days from XXXXXX through XXXXXX, at the daily rates of \$XXX dollars for breakfast and \$XXX dollars for lunch.

The Student's PEI for school year 2014-2015, dated XXXXXX, noted that the Student receives dietary/nutrition accommodations; and the PRDOE acknowledged that it agreed to provide the Student with breakfast and lunch meals on a daily basis.

The PRDOE informed OCR that the School the Student attends does not typically provide its students with meals; however, the PRDOE has ensured that the Student receives breakfast and lunch meals during the current school year 2015-2016. The PRDOE acknowledged to OCR, however, that the PRDOE did not provide or pay for the Student's breakfast and/or lunch meals during school year 2014-2015 and extended school year XXXXXX.

OCR determined that the PRDOE failed to provide the Student with breakfast and lunch meals as follows: XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

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 was not providing meals to the Student in accordance with the Student's PEI, between XXXXXX through XXXXXX.

Based on the above, OCR determined that there was sufficient evidence to substantiate the complainant's Allegation 5, that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with breakfast and lunch meals during school year 2014-2015 and extended school year XXXXXX, as required by his PEI. Accordingly, OCR determined that the PRDOE failed to comply with the regulation implementing Section 504, at 34 C.F.R. §§ 104.33.

On February 16, 2016, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 5. OCR will monitor the implementation of the resolution agreement.

This concludes OCR's investigation of the complaint and 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,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXX, Esq.