



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

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VIRGIN ISLANDS

September 27, 2018

Dr. Julia Keleher  
Secretary of Education  
Puerto Rico Department of Education  
P. O. Box 190759  
San Juan, Puerto Rico 00919-0759

Re: Case No. 02-15-1464  
Puerto Rico Department of Education

Dear Secretary Keleher:

This letter is to notify you of the determination made by the U.S. Department of Education, 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 her son (the Student), on the basis of his disabilities, by failing to provide the Student with: (a) auditory therapies; (b) auditory assistive technology; (c) visual therapies; (d) functional optical evaluations; and (e) visual assistive technology, as specified in his Programas Educativos Individualizados (PEIs)<sup>1</sup> for school year 2015-2016 (Allegation 1). The complainant also alleged that the PRDOE discriminated against the Student, on the basis of his disabilities: by failing to provide the Student with extended school year (ESY) services, as specified in his PEI for school year 2014-2015 (Allegation 2); and failing to provide the complainant and Student's father with parent training, as specified in his PEI for school year 2015-2016 (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 also is 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.

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<sup>1</sup> An individualized education program is referred to as a PEI in Puerto Rico.

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 regulation implementing Section 504, at § 104.33(b)(2), states that the implementation of an individualized education program (IEP) (or PEI) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this requirement.

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

With respect to Allegation 1(b), the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disabilities, by failing to provide the Student with auditory assistive technology, as required by his PEIs for school year 2015-2016. Pursuant to OCR's case processing procedures, OCR will dismiss a complaint allegation when OCR has recently investigated the same or similar allegation based on the same operative facts involving the same recipient in an OCR complaint. During the course of OCR's investigation, OCR determined that Allegation 1(b) is the same as or similar to allegations based on the same operative facts that the complainant raised in other complaints filed with OCR involving the PRDOE, i.e., OCR Case Nos. 02-14-1130 and 02-14-1502, which were resolved by a resolution agreement, on June 30, 2016. Therefore, OCR concluded that it was inappropriate to continue investigating Allegation 1(b). Accordingly, OCR will take no further action regarding Allegation 1(b).

With respect to Allegations 2 and 3, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disabilities: by failing to provide the Student with ESY services, as specified in his PEI for school year 2014-2015; and by failing to provide the complainant and the Student's father with parent training, as specified in his PEI for school year 2015-2016. During the course of OCR's investigation, the complainant acknowledged that the PRDOE had provided the Student with the outstanding ESY services during school year 2016-2017; and had provided the complainant and the Student's father with the outstanding parent training during school year 2017-2018. The complainant stated to OCR that she considered Allegations 2 and 3 resolved. OCR will dismiss allegations when it obtains credible information indicating that the allegations are currently resolved. Accordingly, OCR has dismissed Allegations 2 and 3.

With respect to Allegations 1(a), 1(c), 1(d), and 1(e), the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disabilities, by failing to provide the Student with: auditory therapies; visual therapies; functional optical evaluations; and visual assistive technology, as specified in his PEIs for school year 2015-2016. In OCR's data request to the PRDOE dated November 27, 2015, OCR requested that the PRDOE provide documentation to OCR indicating that the Student has received auditory and visual therapies; functional optical evaluations; and visual assistive technology, as specified in his PEIs for school

year 2015-2016. Additionally, OCR requested that the PRDOE state the frequency and duration and/or dates such services, evaluations, and technology were provided, as well as the name(s) of the individual(s) who provided such services, evaluations, and technology. The PRDOE has not provided OCR with the response to its data request.

Based on the above, OCR determined that the evidence was sufficient to substantiate the complainant's allegation that the PRDOE violated the regulation implementing Section 504, at 34 C.F.R. § 104.33, by failing to provide the Student with auditory and visual therapies; functional optical evaluations; and visual assistive technology, as specified in the Student's PEIs for school year 2015-2016.

On September 13, 2018, the PRDOE signed the enclosed resolution agreement (Agreement) to resolve the compliance issues identified in this investigation regarding Allegations 1(a), 1(c), 1(d), and 1(e). OCR will monitor the implementation of the 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 happens, the individual may file a 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 Genara Necos, Compliance Team Attorney, at (646) 428-3828 or [genara.necos@ed.gov](mailto:genara.necos@ed.gov); or me, at (646) 428-3801 [nadja.r.allen.gill@ed.gov](mailto:nadja.r.allen.gill@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: Jennifer Mauskapf, Esq.