

February 12, 2016

Rafael Román Meléndez
Secretary of Education
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919

Re: Case No. 02-15-1478
Puerto Rico Department of Education

Dear Secretary Román Meléndez:

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 (the PRDOE). The complainant alleged that the PRDOE discriminated against his son (the Student), on the basis of his disability, by failing to provide the Student with the following special education and related aids and services, as required by his individualized education program, or Programa Educativo Individualizado (PEI), during school year 2015-2016: a new XXXXXX class based on the Student's XXX and XXXXXXXXXXXX XXXXX (Allegation 1); and, a balance table/balance beam and therapeutic balls for use in his adaptive physical education class (Allegation 2).

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 (the Department). OCR is also responsible for enforcing 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. 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.

In its investigation, OCR reviewed information and documentation that the complainant and the PRDOE provided. OCR made the following determinations.

During school year 2015-2016, the Student was enrolled in the XXXXXX grade at the XXXXX XXXXXXXX XXXXX School (the School). The Student's PEI for school year 2015-2016 stated that the PRDOE's Committee on Special Education, or Comité de Programación y Ubicación (COMPU) classified the Student as having XXXXXX; and, it required that the PRDOE provide the Student with various special education and related aids and services.

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 a new XXXXXX classroom based on the Student's age and functional level for school year 2015-2016, as required by his PEI. The complainant asserted that the School instead "provisionally assigned" the Student to a teacher and class for school year 2015-2016, but the assigned classroom did not meet the Student's needs.

OCR determined that the Student's PEI for school year 2015-2016, developed during a COMPU meeting on May 28, 2015, does not specifically include a provision requiring that the Student be placed in a new XXXXXX classroom based on his XXX and functional level; rather, the Student's PEI provides for a full-time, self-contained XXXXXX classroom within a regular school.¹ However, OCR determined that the notes from the COMPU meeting² to develop the Student's PEI for school year 2015-2016, state that the Student would be placed in a XXXXX XXXXXXXX elementary XXXXXX classroom within the School based on the Student's age and functional level.

The PRDOE denied the complainant's allegation that the School failed to provide the Student with the placement determined by the COMPU and required by his PEI. Rather, the PRDOE asserted that for school year 2015-2016, the Student was placed in a XXX self-contained XXXXXX classroom on the XXXXXX floor of the School; and, it submitted documentation from the School's Director describing the Student's current classroom.³ However, the PRDOE did not provide any documentation to OCR to establish when the Student was placed in the XXX self-contained XXXXXX classroom at the School. According to the notes from a COMPU meeting on December 10, 2015, the COMPU acknowledged that equipment and materials for the XXX elementary XXXXXX classroom were still outstanding as of that date; and, at the meeting, School staff agreed to follow up with the PRDOE to request delivery of the requested items. It is not clear whether the Student was placed in the XXX classroom prior to December 10, 2015.

The PRDOE also asserted that another student (Student A) was placed in the same classroom as the Student based upon XXXXXXXXXXXX XXXXX, and that a third student (Student B) would be added to the classroom in or around January 2016. However, the PRDOE did not indicate the ages of Student A or Student B, or provide any detailed information about how it assessed the

¹ The PEI refers to the classroom as follows: "Salón Especial en Escuela Regular" or "Salón de Educación Especial de XXXXXXXX a tiempo completo."

² This is a separate document from the Student's PEI and is signed by the COMPU meeting participants, including the complainant. The notes include some of the COMPU's determinations regarding the Student's placement.

³ In documentation the PRDOE provided, the School's Director described the Student's classroom as being located on the XXXXXX floor of the School in an area with minimal distractions due in part to the lack of other surrounding classrooms. According to the Director's description, the Student's current classroom is large, has abundant natural light, an individual work area for each student, and a location for group work.

students' XXXXXXXXXXXX XXXXXXX in order to establish that the Student's placement in a classroom with these students was consistent with the COMPU's determination.

On February 11, 2016, the PRDOE voluntarily agreed to implement the enclosed resolution agreement in order to resolve Allegation 1 without further investigation pursuant to Section 302 of OCR's complaint processing manual.

With respect to Allegation 2, the complainant alleged that the PRDOE failed to provide the Student with several pieces of equipment required by his PEI, including a balance table/balance beam and therapeutic balls to be used in his adaptive physical education class. The complainant provided meeting notes indicating that during a COMPU meeting on May 28, 2015, the XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX teacher notified the Student's COMPU that she lacked the equipment required to serve the needs of her special education students, including the Student, and she presented a list of required equipment to the COMPU.⁴

OCR determined that the Student's PEI for school year 2015-2016 includes three adaptive physical education objectives that refer to the use of particular physical education equipment: (1) the Student will walk across a balance beam/table heel to toe; (2) the Student will throw a small ball through a hoop; and, (3) the Student will kick a medium ball with bent knees. According to notes from the COMPU meeting, held on May 28, 2015, to develop the Student's PEI for school year 2015-2016, the Student's COMPU agreed that a Special Assistant within the PRDOE would deliver the XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX teacher's list of requested equipment to another PRDOE employee, who would acquire the equipment. The COMPU meeting notes from December 10, 2015 confirm that as of that date, the equipment previously requested by the adaptive physical education teacher had not yet arrived at the School.

The PRDOE denied that it failed to provide the Student with the adaptive physical education equipment required by his PEI. The PRDOE also denied that the Student's PEI required the use of a balance table/beam or therapeutic balls, and asserted that while the Student's PEI references certain equipment in the goals and objectives section of the Student's PEI, the adaptive physical education teacher may use other equipment to address the goals contained within the Student's PEI. The PRDOE submitted documentation to OCR that included a list of equipment the adaptive physical education teacher currently uses with the Student, which includes stationary bicycles, pads for floor exercises, large balls, cones, bats, ropes, rings, medicine balls with adjustable belts, and parachute games. However, the PRDOE did not provide to OCR an explanation of how it would be able to assess the Student's progress toward the specific goals and objectives in the Student's PEI, based on the equipment that the Student's teacher currently uses.

On February 11, 2016, the PRDOE voluntarily agreed to implement the enclosed resolution agreement in order to resolve Allegation 2 without further investigation pursuant to Section 302 of OCR's complaint processing manual. OCR will monitor implementation of the enclosed resolution agreement.

⁴ The complainant provided OCR with a list of physical education equipment that he asserted was the list referred to in the COMPU meeting minutes from May 28, 2015. The list included the balance table/balance beam and therapeutic balls of various sizes.

This letter should not be interpreted to address 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 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.

If you have any questions regarding OCR’s determination, please contact Joy M. Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; Letisha Morgan, Senior Compliance Team Investigator, at (646) 428-3827 or letisha.morgan@ed.gov; or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXX XXXXXXXXX, Esq.
XXXXXXXXX XXXXXXXXX, Esq.