

August 3, 2016

Rafael Román Meléndez
Secretary of Education
Puerto Rico Department of Education
P. O. Box 190759
San Juan, Puerto Rico 00919-0759

Re: Case No. 02-16-1190
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, Office for Civil Rights (OCR) in the above-referenced complaint filed against the Puerto Rico Department of Education (PRDOE). The complainant alleged that since in or around August 2015, the PRDOE has discriminated against her son (the Student), who attends the XXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXX XXXXXXXX (the School), on the basis of his disability, by failing to provide him with the following special education and related aids and services required by his individualized education program, or programa educativo individualizado (PEI): weekly individual psychological therapy; weekly group psychological therapy; twice weekly group occupational therapy; and reimbursement for transportation costs incurred when transporting the Student between home and School.

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 or 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 (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.

OCR determined that during school year 2015-2016, the Student attended the School in the Mayagüez Region of the PRDOE. The Student was classified by the PRDOE as a student with a disability (XXXXXX). The Student's PEI for school year 2015-2016 requires that the PRDOE provide the Student with various special education services including specialized instruction, speech therapy, physical therapy, occupational therapy, psychological therapy, visual therapy, a 1:1 assistant, social skills instruction, and reimbursement for transportation costs incurred when transporting the Student between home and School. In June 2015, the Committee on Special Education, or Comité de Programación y Ubicación (COMPU) met regarding the Student and specifically determined that for school year 2015-2016, the Student required occupational therapy twice weekly for 45 minutes per session; weekly individual psychological therapy for 50 minutes per session; weekly group psychological therapy for 50 minutes per session; and reimbursement for daily transportation services from home to school.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), requires recipients to provide a free appropriate public education to each qualified individual with a disability in the recipient's jurisdiction. In accordance with the regulation implementing Section 504, at 34 C.F.R. § 104.33(b), an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of a student with a disability as adequately as the needs of non-disabled students; and, are based upon adherence to the evaluation and placement procedures set forth in the regulation. Implementation of an IEP or PEI is one means of meeting this requirement.

During the course of OCR's investigation, the PRDOE acknowledged to OCR that it did not provide the Student with the occupational therapy, individual psychological therapy, or group psychological therapy required by his PEI from August 2015 to May 2016. The PRDOE also acknowledged that it did not provide the complainant with reimbursement for transportation services from home to school as required by the Student's PEI, from August 2015 to May 2016. Accordingly, OCR determined that the PRDOE is not in compliance with the regulation implementing Section 504, at 34 C.F.R. § 104.33.

On August 3 2016, the PRDOE agreed to implement the enclosed resolution agreement to resolve this compliance issue. 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 happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we 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; Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or jessica.daye@ed.gov; or Félice 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.