



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

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May 13, 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. 02-16-1197
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 (PRDOE). The complainant alleged that the PRDOE discriminated against her son (the Student), on the basis of his disability (XXXXXX), from January 11, 2016, through April 5, 2016, by failing to provide him with occupational therapy and physical therapy required by his individualized education program (IEP), or Programa Educativo Individualizado (PEI) for school year 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 educational 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.

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by fostering educational excellence and ensuring equal access.*

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On March 1, 2016, OCR contacted the PRDOE to provide notice of the complaint and initiate OCR's Rapid Resolution Process (RRP). OCR reviewed documentation submitted by the complainant and the PRDOE. OCR made the following determinations.

OCR determined that during school year 2015-2016, the Student was in a pre-kindergarten program in the XXXXXXXX District 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 provides for various special education services including specialized instruction, speech therapy, physical therapy, occupational therapy, and psychological therapy. The PEI specifically required that the PRDOE provide the student with occupational therapy 3 times per week for 45 minutes per session and physical therapy one time per week for 30 minutes per session. The PRDOE acknowledged to OCR that it did not provide the Student with the occupational therapy and physical therapy required by his PEI from January 11, 2016, to April 5, 2016. The PRDOE informed OCR and the complainant confirmed that the PRDOE has resumed providing the occupational therapy and physical therapy required by the Student's PEI as of April 5, 2016.¹

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 the disabled student as adequately as the needs of non-disabled students are met; 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.

Based on the above, OCR determined that the PRDOE failed to provide the Student with occupational therapy and physical therapy in accordance with his PEI from January 11, 2016, to April 4, 2016, as deemed necessary by the PRDOE's Committee on Special Education, or Comité de Programación y Ubicación (COMPU) to meet the student's individual educational needs as adequately as the needs for non-disabled students are met. Accordingly, OCR determined that the PRDOE is not in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.33.

On May 10, 2016, the PRDOE agreed to implement the enclosed resolution agreement to resolve this compliance issue. OCR will monitor the implementation of the resolution agreement. If the PRDOE fails to comply with the terms of the resolution agreement, OCR will resume its investigation of this complaint.

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.

¹ The PRDOE also provided OCR with certification from the Student's occupational and physical therapy provider indicating that services have been provided since April 5, 2016.

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; 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: XXXXXXXX XXXXXXXXX, Esq.