

September 16, 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. 02-16-1252
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 on or about August 24, 2015, the PRDOE discriminated against her son (the Student), who attended the XXXXXXXX XXXXXXXX (the Academy), on the basis of his disability, by failing to provide the Student with the following special education and related aids and services, as agreed upon for school year 2015-2016: (a) 1:1 teaching instruction in the Student's academic classes; (b) twice weekly psychological therapy; (c) weekly occupational therapy; (d) weekly speech-language therapy; and, (e) instruction regarding the use of his assistive technology (computer) (Allegation 1). The complainant also alleged that since on or about August 24, 2015, the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with instruction in the following classes, as agreed upon for school year 2015-2016: (a) Spanish; (b) science; (c) English; and (d) social studies (Allegation 2). The complainant further alleged that the PRDOE discriminated against the Student, on the basis of his disability, by denying the Student a free appropriate public education (FAPE) since the Student's placement at the Academy was terminated in January 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 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 the Student attended the Academy from August 2015 through in or around January 2016.¹ The Student was classified by the PRDOE as a student with a disability, and has been diagnosed with XXXXXX and XXXXXXXXXXX-XXXXXXX XXXXXXXXXXXXXXXX XXXXXXXXXXX (XXXX). The Student's individualized education program, or programa educativo individualizado (PEI), for school year 2015-2016, dated April 26, 2016, required that the PRDOE provide the Student with 1:1 teaching instruction in the Student's academic classes; twice weekly psychological therapy; weekly occupational therapy; weekly speech-language therapy; weekly physical therapy; and, instruction regarding the use of the Student's assistive technology (computer).²

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 the special education and related aids and services agreed upon by the Student's Committee on Special Education, or Comité de Programación y Ubicación (COMPU) for school year 2015-2016, including (a) 1:1 teaching instruction in his regular education academic classes; (b) twice weekly psychological therapy; (c) weekly occupational therapy; (d) weekly speech-language therapy; and, (e) instruction regarding the use of his computer.

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. Implementation of an IEP or PEI is one means of meeting this requirement.

During the course of OCR's investigation, the PRDOE asserted that it provided the Student with 1:1 teaching instruction in his regular education academic classes [as referred to in Allegation 1(a)], but acknowledged to OCR that it did not continuously provide the Student with the twice weekly psychological therapy; weekly occupational therapy; weekly speech therapy, or instruction regarding the use of his assistive technology [as referred to in Allegations 1(b)-(e)] required by his PEI during school year 2015-2016. Accordingly, OCR determined that the PRDOE failed to provide the Student with a free appropriate public education as required by the regulation implementing Section 504, at 34 C.F.R. § 104.33. Before concluding the

¹ The Academy is a private placement that is paid by the PRDOE to educate the Student. The Academy offers regular and special education services.

² Although the PEI was not finalized until April 26, 2016, prior to that date, there was an arrangement pursuant to which the Student attended the Academy and the PRDOE was responsible for funding the provision of the following to the Student: 1:1 teaching instruction, twice weekly psychological therapy; weekly occupational therapy; and weekly speech-language therapy.

investigation of Allegation 1(a), the PRDOE agreed to implement the attached resolution agreement to resolve Allegation 1(a) without further investigation, and to resolve the compliance issues OCR identified regarding Allegations 1(b)-(e).

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 instruction in the following classes, as agreed upon for school year 2015-2016: (a) Spanish; (b) science; (c) English; and (d) social studies. The complainant asserted that the Academy failed to provide the Student with the amount of daily Spanish instruction and the amount of weekly science instruction provided to students without disabilities in accordance with PRDOE policy. The complainant further asserted that the PRDOE provided the Student with instruction in English and social studies from an instructor who was less qualified than the instructor who provided instruction to students without disabilities; namely, a special education teacher who was not qualified to provide instruction in English and social studies to high school students. OCR requested that the PRDOE provide data to confirm whether or not the Academy provided the Student with the required amount of daily Spanish instruction and weekly science instruction. Further, OCR requested that the PRDOE provide data to confirm that the instructor who provided the Student with instruction in English and social studies was qualified. The PRDOE failed to provide any relevant documentation or other information to refute the complainant's allegation.

With respect to Allegation 3, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by denying the Student a FAPE since the Student's placement at the Academy was terminated in January 2016. The complainant asserted that in a letter, dated February 4, 2016, the Academy advised the complainant that it was terminating the Student's special education placement; and, that the PRDOE did not provide the Student with another special education placement for the remainder of school year 2015-2016. OCR requested that PRDOE provide data to confirm whether or not the Academy terminated the Student's placement on February 4, 2016; and if so, whether the PRDOE provided the Student with another placement for the remainder of school year 2015-2016. The PRDOE failed to provide any relevant documentation or other information to refute the complainant's allegation.

On September 16, 2016, the PRDOE agreed to implement the enclosed resolution agreement to resolve Allegations 2 and 3. 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.

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 Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXX XXXXXXXX, Esq.