

December 15, 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. 02-16-1512
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 the PRDOE discriminated against her daughter (the Student), on the basis of her disabilities (XXXXXX and XXXXXX XXXXXXXXXXXX), from August 8, 2016 through September 1, 2016, by failing to provide the Student with the following special education and related aids and services, as required for school year 2016-2017 by her individualized education program (IEP), or Programa Educativo Individualizado (PEI): (a) a special education placement; and, (b) a 1:1 services assistant.

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.

On August 22, 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 also interviewed the complainant. OCR made the following determinations.

During school year 2016-2017, the Student was classified by the PRDOE as a student with a disability (based on diagnoses of XXXXXX and XXXXXX XXXXXXXXXXXX). The Student's PEI for school year 2016-2017 provides for various special education services, including a special education placement and a 1:1 services assistant. The PRDOE acknowledged to OCR that although school year 2016-2017 began on August 8, 2016, it did not approve the Student's special education placement until August 26, 2016; and did not assign the Student a 1:1 services assistant until September 1, 2016. The complainant confirmed that the Student began attending her special education placement at XXXXXXXX XXXXXXXX (the school) on or about August 24, 2016, and her 1:1 services assistant began providing assistance to her on September 1, 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 special education and related aids and services, including a special education placement from August 8, 2016 to August 24, 2016; and similarly failed to provide a 1:1 services assistant from August 8, 2016 to September 1, 2016, in accordance with her PEI, 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.² Accordingly, OCR determined that the PRDOE is not in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.33.

On December 9, 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 complainant informed OCR that prior to August 24, 2016, the Student was not attending school.

² During the course of OCR's investigation, the complainant advised OCR that the school terminated the Student's special education placement as of November 18, 2016, but that the Student continued receiving her related aids and services. However, in an electronic mail message (email) dated December 1, 2016, the PRDOE asserted that the Student's placement at the school was not terminated at any point on or about November 18, 2016. Despite OCR's inquiries, neither PRDOE nor the complainant confirmed the status of the Student's placement as of the date of this letter.

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 me, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Félice Bowen
Compliance Team Leader

Encl.

cc: XXXXXXXXXXX XXXXXXXXXXX, Esq.