



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

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NEW JERSEY
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PUERTO RICO
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April 10, 2017

Dr. Elena Keleher
Secretary of Education
Puerto Rico Department of Education
P. O. Box 190759
San Juan, Puerto Rico 00919-0759

Re: Case No. 02-17-1019
Puerto Rico Department of Education

Dear Dr. Keleher:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Puerto Rico Department of Education (the PRDOE). The complainant alleged that the PRDOE discriminated against her sons (Students 1 and 2, and collectively referred to as “the Students”) on the basis of their disabilities, by failing to provide them with educational services/instruction as required by their individualized education programs (IEPs), or Programas Educativos Individualizados (PEIs),¹ during school year 2016-2017.

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. 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.

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires recipients to provide a free, appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient’s jurisdiction. The provision of an appropriate education is the provision of regular or special education and related aids and services that are (i) designed to meet the individual

¹ An IEP is referred to as a PEI in Puerto Rico.

educational needs of disabled students as adequately as the needs of non-disabled students are met; and (ii) based upon adherence to procedures that satisfy the evaluation and placement requirements of §§ 104.34, 104.35 and 104.36. The regulation implementing Section 504, at §104.33(b)(2), states that the implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting the requirement to provide regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled student.

In its investigation, OCR reviewed documentation that the complainant and the PRDOE submitted. OCR also interviewed the complainant.

The complainant alleged that the PRDOE discriminated against the Students, on the basis of their disabilities, by failing to provide them with educational services/instruction as required by their PEIs, during school year 2016-2017. The complainant asserted that the PRDOE placed the Students in the same self-contained special education classroom at the XXX XXXXXX School (the school) for school year 2016-2017. The complainant stated that the Students began attending the school on September 30, 2016 and as of that date, the self-contained classroom in which they had been placed at the school was in disrepair and did not have an assigned teacher. The complainant further asserted that when a teacher was assigned, she was frequently absent; and the school did not provide a substitute special education teacher for the Students' classroom, resulting in the Students' loss of educational services.

OCR determined that Student 1's PEI for school year 2016-2017 provided for Student 1 to be placed in a self-contained special education classroom,² with: (a) extended school year services; (b) speech and language therapy two times weekly for 30 minutes per session; and (c) adaptive physical education therapy two times weekly for 50 minutes per session. Student 2's PEI for school year 2016-2017, provided for Student 2 to be placed in a self-contained special classroom,³ with: (a) speech and language therapy two times weekly for 30 minutes per session; (b) occupational therapy two times weekly for 30 minutes per session; and (c) physical therapy three times weekly for 45 minutes per session.

In OCR's data request to the PRDOE dated December 15, 2017, OCR requested that the PRDOE provide documentation to OCR substantiating that, from September 30, 2016 to the present, the Students have received educational instruction services in accordance with their PEIs. OCR also requested that the PRDOE state the frequency and duration and/or dates such services were provided, as well as the name(s) of the individual(s) who provided such services.

To date, the PRDOE has not provided OCR with a complete response to its data request. On March 3, 2017, the PRDOE submitted a partial response to OCR's data request, stating that the special education teacher (the teacher) had been absent during school year 2016-2017; however, the school had provided some educational services to the Students in an interim classroom during school year 2016-2017. Documentation the PRDOE submitted included statements from the school's principal indicating that the Students' classroom was in "disrepair" and that for the period from the beginning of the school year to xxx 2016, the Students' learning environment

² The PRDOE classified Student 1 as xxxxx xxxxx.

³ The PRDOE classified Student 2 as xxxxx xxxxx.

was “irregular due to the physical condition of the [Students’] classroom, but the [Students] were never without special education services” from the time they were enrolled on September 30, 2016. Notwithstanding the general statement that the Students were not without instruction during this time frame, the PRDOE did not provide OCR with any evidence reflecting that the Students were provided with educational instruction/services as prescribed by their PEIs, during this time frame.

Based on its investigation, OCR has concerns as to whether the PRDOE provided the Students with educational services/instruction as required by their PEIs during school year 2016-2017. On April 10, 2017, the PRDOE signed the attached resolution agreement to voluntarily resolve the complainant’s allegation without further investigation, in accordance with Section 302 of OCR’s Case Processing Manual. 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 individual 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, that if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Genara Necos, Compliance Team Attorney, at (646) 428-3828 or genara.necos@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: xxxx xxxxxx, Esq.
xxxxx xxxxxx, Esq.