

August 18, 2017

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

Re: Case No. 02-17-1241  
Puerto Rico Department of Education

Dear Secretary Keleher:

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 from January 17, 2017 through May 2017, the PRDOE discriminated against her son (the Student), who attends the Escuela XXX XXXXXXX XXXXXXX XXXXXXX (the School), on the basis of his disability (XXXXXX and XXXXXXX), by failing to provide the Student with the following special education and related aids and services, as required by his individualized education program (IEP), or Programa Educativo Individualizado (PEI) for school year 2016-2017: weekly psychological therapy (Allegation 1); biweekly occupational therapy (Allegation 2); and, a 1:1 services assistant (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 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.

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

During school year 2016-2017, which began on August 8, 2016 and ended on May 31, 2017, the Student attended the School and was classified by the PRDOE as a student with a disability, based on his diagnoses of XXXXXX and XXXXXXXX. The Student's PEI for school year 2016-2017 provides for various special education services, including placement in a self-contained special education classroom, speech and language therapy, occupational therapy, psychological therapy, and a 1:1 services assistant (aide).

With respect to Allegations 1 and 2, the complainant alleged that from January 17, 2017 through the end of the school year in May 2017, the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with weekly psychological therapy and biweekly occupational therapy, as required by his PEI, for school year 2016-2017. In support of Allegations 1 and 2, the complainant asserted that Student's aide resigned on January 17, 2017; and because the Student did not have the assistance of his aide during his therapy sessions, the Student's psychological and occupational therapists refused to provide him with his mandated psychological and occupational therapies. The complainant further asserted that the therapists stated that they would not provide the Student with his mandated therapies because they were not "trained" on how to handle the Student's XXXXX XXXXX XXXXXXXXXXXXX (XXX) device that is used to control his seizures; and, they were not "authorized" to meet with the Student without his aide present.

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.

With respect to Allegations 1 and 2, the PRDOE confirmed that the Student's 2016-2017 PEI provides for weekly psychological therapy and biweekly occupational therapy. During the course of OCR's investigation, the PRDOE acknowledged to OCR that it did not provide the Student with the psychological therapy and occupational therapy required by his PEI between January 2017 and May 2017.<sup>1</sup> Based on the foregoing, OCR determined that the PRDOE failed to provide the Student with the special education and related aids and services, specifically weekly psychological therapy and biweekly occupational therapy, in accordance with his PEI, as deemed necessary by the PRDOE's Committee on Special Education, or Comité de Programacion y Ubicacion (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.

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<sup>1</sup> The PRDOE informed OCR that the Student missed at least six sessions of psychological therapy and five sessions of occupational therapy during school year 2016-2017.

With respect to Allegation 3, the complainant alleged that since January 17, 2017, the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with an aide, as required by his PEI for school year 2016-2017. In support of Allegation 3, the complainant informed OCR that the Student uses a XXX device that is “implanted” on the XXXXX of his XXXX XXXXXXXXX to controls his seizures; and, the Student requires the assistance of an aide who is trained in the use of his XXX device. The complainant asserted that between January 17, 2017 and March 2, 2017, the PRDOE did not provide the Student with an appropriately trained aide, as required by his PEI. The complainant informed OCR that on March 2, 2017, the principal of the School (principal) assigned the Student a temporary aide to accompany him in the classroom; however, the temporary aide was not trained to work with the Student, and to provide him with the support that he requires.<sup>2</sup>

The PRDOE acknowledged that the Student’s assigned aide resigned in January 2017; however, the PRDOE asserted that the School immediately arranged for another staff member in the Student’s classroom to provide support to the student until another aide could be formally assigned. The PRDOE further informed OCR that the Student’s COMPU met on March 3, 2017 to formalize the assignment. The PRDOE further asserted that thereafter, the complainant requested that the Student be assigned to an aide who could provide support to him exclusively; and as a result, the PRDOE subsequently referred the Student to Remedio Provisional<sup>3</sup> to arrange for an aide to be assigned according to the complainant’s preferences. Before the conclusion of OCR’s investigation of Allegation 3, the PRDOE agreed to enter into a resolution agreement to resolve Allegation 3 without further investigation.

On August 16, 2017, the PRDOE agreed to implement the enclosed resolution agreement to resolve the compliance issues identified with respect to Allegations 1 and 2, and, as stated above, to voluntarily resolve Allegation 3 without further investigation. 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.

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 a complaint alleging such treatment.

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<sup>2</sup> The complainant informed OCR that due to the Student’s XXXXXXXXXy, his aide is always present in the classroom and during his therapy sessions to ensure the Student’s safety in the event of an XXXXXXXXX XXXXXXXX.

<sup>3</sup> Remedio Provisional is a contracting agency that is approved to provide related aids and services to students who require special education and related aids and services via a provider of the parent’s or guardian’s choice rather than through services coordinated directly through the PRDOE.

Under the Freedom of Information Act, it may be necessary to release this letter 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 regarding OCR's determination, please contact Joy M. Purcell, Compliance Team Attorney, at (646) 428-3766 or [joy.purcell@ed.gov](mailto:joy.purcell@ed.gov); Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or [jessica.daye@ed.gov](mailto:jessica.daye@ed.gov); or me, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXX XXXXX, Esq.