

February 15, 2019

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

Re: Case No. 02-18-1442  
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), regarding the above-referenced complaint filed against the Puerto Rico Department of Education (the PRDOE). The complainant alleged that the PRDOE discriminated against 24 students with disabilities who are enrolled in PRDOE schools (as identified in Exhibit A), by failing to provide special education and related aids and services as required by their individualized education programs (IEPs), or programas educativos individualizados (PEIs), since on or about August 6, 2018.

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 (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 educational system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR reviewed information that the complainant submitted. OCR made the following determinations.

The complainant alleged that the PRDOE discriminated against 24 students with disabilities who are enrolled in PRDOE schools, by failing to provide special education and related aids and services as required by their IEPs, or PEIs since on or about August 6, 2018. In support of her allegation, the complainant provided a list of 24 students by name and student identification number, whom she asserted did not receive specific services required by their PEIs. The complainant reported that the PRDOE had failed to provide the students with special education placements and a variety of special education related aids and services as required by their PEIs, including: 1:1 service assistants, special education teachers, adaptive physical education, elective classes (e.g., art and music), transportation, and assistive technology. The students included on the list the complainant provided were enrolled in grades pre-kindergarten through eleventh grade at schools across Puerto Rico; and, the students were reported to have a variety of disabilities.

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.

The PRDOE asserted that it provided some of the students identified in Exhibit A with the special education and related aids and services as required by their PEIs; however, to date, the PRDOE has not provided to OCR any documentation in response to OCR's request for data.

On February 15, 2019, the PRDOE signed the enclosed resolution agreement to resolve the complaint allegation. OCR will monitor the implementation of the Agreement.

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.

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 regarding OCR's determination, please contact Joy M. Purcell, Senior 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 Félice Bowen, Compliance Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

/s/  
Timothy C.J. Blanchard

Encl.

cc: XXXXXXXX XXXXXXXX, Esq.

**Exhibit A**

	<b>Student Name</b>	<b>Student Identification Number</b>	<b>School</b>	<b>Special Education/ Related Aids and Services not provided</b>
1.	XXXX XXXXXXXX XXXXXX	XXXXXXXXXX	Jorge L. Marrero Padilla	Full time special education teacher; individual services assistant (T1)
2.	XXXXXX X. XXXXXXXXXX XXXXXX	XXXXXXXXXX	Superior Adela Rolón Fuentes	T1; related services
3.	XXXXXX X. XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX	Francisca Dávila Sempritt	Regular education teacher; T1
4.	XXXXXX X. XXXXXX XXXXXX	XXXXXXXXXX	Francisco Felicie Martínez	T1
5.	XXXXXXXX X. XXXXXXXX XXXXXXXX	XXXXXXXXXX	Jacinto López Martínez	full time special education teacher; T1; adaptive physical education teacher; elective classes (art and music)
6.	XXXXXXXX X. XXXXXX XXXXX	XXXXXXXXXX	Luis Llorens Torres	T1; full time pre-kindergarten special education teacher
7.	XXXXXXXXXX XXXXX XXXXXX	XXXXXXXXXX	Coleen Vazquez Urrutía	special education; transportation
8.	XXXXXXXX X. XXXXXXXX XXXXX	XXXXXXXXXX	Rosa Luz Zayas Cruz	T1; related services
9.	XXXX XXXXXXX XXXXXX XXXXXXX	<u>XXXXXXXXXX</u>	<u>Maria Libertad Gomez Utuado</u>	<u>T1</u>
10.	XXXXXXXX XXX XXXX XXXX	XXXXXXXXXX	Escuela Especializada Cinematografía Cacique Secundaria	Regular education teacher; special education teacher; T1; related services; transportation; physical education teacher
11.	XXXXXX X. XXXXXXXXXXXX	XXXXXXXXXX	Victor Pares Collazo	Full time special education teacher; T1
12.	XXXXXXXXXXXX XXXXXXXXXXXX XXXXXX	XXXXXXXXXX	Nueva de Quebrada Arenas Siglo 21	T1
13.	XXXXXX XXXXX	XXXXXXXXXX	El Señorial	T1
14.	XXXXXX XXXXXXX	XXXXXXXXXX	Juanita Garcia Peraza	Full time special education teacher
15.	XXXX XXXX XXXXXXXXXX	XXXXXXXXXX	CODERI	Transportation

	<b>Student Name</b>	<b>Student Identification Number</b>	<b>School</b>	<b>Special Education/ Related Aids and Services not provided</b>
16.	XXXXX X. XXXXX XXXX	XXXXXXXXXX	Dr. Efrain Sanchez Hidalgo	Special education teacher; related services; transportation
17.	XXXXX XXXX XXXXX XXXXXXXXXX	XXXXXXXXXX	Honorio Hernandez Quijano	T1; full time special education teacher; adaptive physical education; placement
18.	XXXXXXXXXX XXXX	XXXXXXXXXX	Elpidio H. Rivera	Related services; assistive technology equipment and materials; English teacher
19.	XXX X. XXXX	XXXXXXXXXX	Elpidio H. Rivera	T1; related services; resource classroom
20.	XXXXX X. XXXXX XXXXXXXXXX	XXXXXXXXXX	Arturo Lluberas	Special education teacher; T1; resource classroom
21.	XXXXXXXX XXXXX XXXXXXX XXXXXXXXXX	XXXXXXXXXX	Antonio Velez Alvarado	Special education teacher
22.	XXXXXXXX X. XXXXXXXXXX XXXXXXX	XXXXXXXXXX	Rafael Martinez Nadal	Full time special education teacher; transportation; placement; Individualized Education Program (PEI) for SY 2018-2019
23.	XXXXXX XXXXXX XXXXXXX	XXXXXXXXXX	Jorge L Marrero	T1; adaptive physical education; elective classes (art, music); assistive technology equipment and materials
24.	XXXXX X. XXXX XXXXXX	XXXXXXXXXX	Ernestina Bracero Perez	Full time special education classroom; full time special education teacher; T1; related services; transportation; assistive technology equipment and materials