



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

July 8, 2020

Sent by email only to Hernandez_Eli@de.pr.gov

Dr. Eligio Hernández Pérez
Secretary of Education
Puerto Rico Department of Education
P. O. Box 190759
San Juan, Puerto Rico 00919-0759

Re: Case No. 02-20-1193
Puerto Rico Department of Education

Dear Secretary Hernández Pérez:

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 his son (the Student), on the basis of his disability, by failing to provide the Student with educational therapy services from March XX, 2019, through October 2019, as required by the Student's Programa Educativo Individualizado (PEI).¹

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 also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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.

OCR interviewed the Complainant during the course of the investigation. OCR also reviewed documentation that the Complainant submitted.

¹ An individualized education program (IEP) is referred to as a PEI in Puerto Rico.

OCR determined that during school year 2019-2020, the Student was a XX-year-old high school student with disabilities, enrolled in a PRDOE vocational high school. The Student was eligible for special education and related aids and services pursuant to a PEI dated June XX, 2019.

The Complainant stated that during a meeting of the Comité de Programación y Ubicación de Educación Especial (COMPU) on March XX, 2019, the COMPU determined that the Student should receive educational therapy services, effective immediately, three times per week, for 45 minutes. The Complainant stated that the COMPU determined that the Complainant was responsible for finding a provider, but he was unable to secure a provider until October 2019.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that a recipient shall provide a free appropriate public education (FAPE) to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation, at 34 C.F.R. § 104.33(b)(1)(i), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The implementation of an PEI is one means of meeting those requirements.

The Complainant provided a copy of the minutes from the COMPU meeting held on March XX, 2019, and OCR confirmed that the minutes stated that the COMPU agreed that the Student should receive educational therapy services. The Student's PEI, dated June XX, 2019, provided that the Student receive educational therapy services for 55 minutes per day, five days per week. To date, the PRDOE has not provided documentation to OCR to substantiate that the Student received educational therapy services in accordance with his PEI.

On June 29, 2020, the PRDOE signed the enclosed resolution agreement (Agreement) to voluntarily resolve the Complainant's allegation without further investigation, pursuant to Section 302 of OCR's *Case Processing Manual*. 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 a 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 the individual 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, please contact Geraldo Perez, Compliance Team Investigator, at (646) 428-3765 or geraldo.perez@ed.gov; Andy Artz, Compliance Team Attorney, at (646) 428-3901 or alexander.artz@ed.gov; or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or anna.moretto.cramer@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Jennifer S. Mauskapf, Esq.
Monica Munin, Esq.
Alberto J. Valentin, Esq.