



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

August 28, 2020

Sent via email only to: Hernandez_eli@de.pr.gov

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

Re: Case No. 02-20-1202
Puerto Rico Department of Education

Dear Dr. Hernandez:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Puerto Rico Department of Education (the PRDOE). The Complainant alleged that the PRDOE discriminated against her son (the Student), on the basis of his disability, by failing to provide the Student with special education instruction in a resource room setting, as required by the Student's individualized education program (IEP), or programa educativo individualizado (PEI), on the following dates: January 28-31, 2020; February 3-7, 10-13, 18, 20, 24-28, 2020; and, March 3, 9-11, 2020.

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). Additionally, OCR 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.

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. §

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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.

OCR reviewed information that the Complainant submitted to OCR. During school year 2019-2020, the Student was classified by the PRDOE as a student with a disability and enrolled in the Escuela XXXXXX X. XXXXXXXX XXXXX (the School).

The Complainant asserted that the Student's PEI required that he receive daily special education instruction in a resource room setting, from August 2019 to May 2020. The Complainant further asserted that, on or about December 21, 2019, the Director of the School (the Director) informed her that the Student's special education teacher (the Teacher) had resigned from the School and the PRDOE had not secured the Teacher's replacement. The Complainant alleged that, as a result, the Student did not receive the special education instruction in a resource room setting required by his PEI on January 28-31, 2020; February 3-7, 10-13, 18, 20, 24-28, 2020; and, March 3, 9-11, 2020.

On August 27, 2020, the PRDOE voluntarily agreed to sign the attached resolution agreement to resolve this complaint without further investigation. OCR will monitor the implementation of the resolution 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 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 Joy Purcell, Senior 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 Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: Monica Munin, Esq. (by email)

Attachment