



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

RACHEL POMERANTZ
DIRECTOR
NEW YORK OFFICE

May 18, 2022

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

Eliezer Ramos Parés
Secretary of Education
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919-0759

Re: Case No. 02-22-1062
Puerto Rico Department of Education

Dear Secretary Ramos Parés:

This letter is to notify you of the determination made by the U.S. Department of Education (the Department), Office for Civil Rights (OCR), regarding a complaint filed against the Puerto Rico Department of Education (the PRDOE). The Complainant alleged that the PRDOE discriminates on the basis of disability by requiring students with disabilities to wear orange shirts as part of their school uniforms at the Escuela XXXXXX XXXXX de XXXXX (the School) in XXXXX, Puerto Rico.

OCR enforces 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 Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. As a recipient of Federal financial assistance from the Department and as a public elementary and secondary education system, the PRDOE is subject to Section 504 and Title II.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. §§ 104.4(b)(1)(i) and (vii), provides that a recipient may not, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from an aid, benefit, or service; or otherwise limit a qualified person with a disability in the enjoyment of any

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(iv) further states, that a recipient may not provide a different or separate aid, benefits, or services to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others. Additionally, the regulation implementing Title II, at 28 C.F.R. §§ 35.130(b)(1)(i) and (vii), states that a public entity may not, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from any aid, benefit, or service; or, otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

In its investigation, OCR interviewed the Complainant and several witnesses. OCR also reviewed documentation that the Complainant and the PRDOE submitted, and publicly available information online. OCR made the following determinations.

The Complainant alleged that the PRDOE discriminates on the basis of disability by requiring students with disabilities to wear orange shirts as part of their school uniforms at the School. The Complainant alleged that pursuant to a School uniform policy, the director of the School (the Director) requires students with disabilities who are enrolled in a multi-grade self-contained education classroom (the Classroom) to wear orange shirts as part of their school uniforms but requires all other students at the School to wear uniform shirts that correspond to their respective grade levels. The Complainant stated that the students in the Classroom are different ages and grades but were required to wear the orange shirts that were also designated for pre-kindergarten students although none of the Classroom students are in that grade or age range. The Complainant provided screenshots of a post on the School's Facebook page dated XXX X, 2021, which announced the School's uniform policy for school year 2021-2022. The screenshots of the post included photographs of shirts in different colors labeled as follows: orange for Pre-Kinder y Educación Especial (pre-kindergarten and special education); light blue for Kinder (kindergarten); royal blue for first, second, and third grades; and lime green for fourth and fifth grades.

The PRDOE denied that the Director required students with disabilities to wear orange shirts as part of their school uniforms. The PRDOE informed OCR that the School, like other schools in the PRDOE, has a Consejo Escolar (School Council/Board) that determines each school's uniform policy in collaboration with the parents/guardians of enrolled students. The PRDOE provided documentation indicating that for school year 2019-2020, the School's Council/Board planned to hold a series of meetings with parents/guardians and students between November 2019 and January 2020, to select a new school uniform. However, these plans were delayed because of a series of earthquakes across Puerto Rico in December 2019, and the onset of the COVID-19 pandemic in early 2020.

The PRDOE asserted that the School proposed to select a new school uniform prior to the start of school year 2021-2022, and held a parent assembly on XXXXXX XX, 2021, to discuss the new uniform, among other topics. During an assembly held for parents of enrolled students held on that date, the School discussed the proposed school uniform shirts. The PRDOE provided to OCR photocopies of images of the proposed shirts in different colors labeled by grade level: orange for

Pre-K; light blue for Kinder (kindergarten); royal blue for first, second, and third grades; and lime green for fourth and fifth grades.

The PRDOE denied that the School intended to require students with disabilities placed in the Classroom to wear orange shirts as part of their school uniform for school year 2021-2022. However, prior to the assembly held on XXXXXX XX, 2021, some parents had heard that the School would require this and expressed their concerns about this plan. The PRDOE asserted that in response to the parents’ concerns, on XXXXXX X, 2021, in a WhatsApp chat, a teacher at the School informed two parents of Classroom students that the Director had stated that “they can wear the color assigned to their grade level;” the PRDOE also provided a copy of the WhatsApp chat.

OCR reviewed the School’s Facebook page and determined that on or about XXXX X, 2021, the School posted its uniform policy for school year 2021-2022, along with images of shirts in different colors labeled as follows: orange for Pre-Kinder y Educación Especial (pre-kindergarten and special education); light blue for Kinder (kindergarten); royal blue for first, second, and third grades; and lime green for fourth and fifth grades.¹ OCR determined that in response to a question posted on its Facebook page, the School confirmed that the uniform color for students in the Classroom was orange. OCR noted that the School’s Facebook page also contained several photographs of staff and students wearing orange shirts in XXXXXXXXXX 2021. Specifically, a post on the School’s Facebook page, dated XXXXXXXXXXXX, 2021, which commemorated “Special Education Month,” included a photograph of adults identified as special education teachers who were all wearing orange shirts.² There were additional photographs of children of different ages wearing orange shirts posted on the same date to the School’s Facebook page.³

OCR interviewed parents and special education providers who stated that during school year 2021-2022, until approximately late February or early March 2022, the School required students with disabilities to wear orange uniform shirts rather than the uniform shirt in the color that corresponded to the student’s grade level. According to one witness, in or around late February 2022 or early March 2022, the School sent a letter to parents notifying them that students with disabilities could now wear a uniform shirt corresponding to the student’s grade level. However, the witness also stated that the majority of students with disabilities continue to wear orange uniform shirts instead of purchasing new shirts with just two months left in the school year.⁴

During OCR’s investigation, witnesses also asserted that the directors of other PRDOE schools require students with disabilities to wear uniform shirts that are different in color from those worn by students without disabilities. As an example, a witness provided to OCR a copy of an undated letter on PRDOE letterhead describing the school uniform/shirt policy for another school, Escuela XXXXXXXXXXXXXXXXXXXX XXXXX de XXXXXX (School A), as follows: orange for Pre-K/EE

¹ Este nuevo curso escolar... (This new school year...)- Escuela XXXXXX XXXXX de XXXXXX| Facebook (last visited on May 18, 2022)

² Aquí una foto de nuestras...(Here is a photo of our...) - Escuela XXXXXX XXXXX de XXXXXX| Facebook (last visited on May 18, 2022)

³ Celebramos hoy, una... (Today we celebrate...) - Escuela XXXXXX XXXXX de XXXXXX| Facebook (last visited on May 18, 2022).

⁴ According to the PRDOE calendar for school year 2021-2022, the last day of classes is May 27, 2022. <https://de.pr.gov/calendario/> (last visited on May 18, 2022).

(pre-kindergarten and special education); light blue for pre-kinder regular (regular pre-kindergarten); turquoise blue for kindergarten; violet for first, second, and third grades; and green for fourth and fifth grades. OCR spoke with parents who confirmed that, to date, School A also requires students with disabilities to wear orange uniform shirts.

Prior to the completion of OCR's investigation, on May 16, 2022, the PRDOE signed the enclosed resolution agreement (the Agreement) to resolve the concern OCR identified with regard to the allegation that the PRDOE requires students with disabilities to wear orange or other disability-identifying colored shirts as part of their uniforms at the School, School A, and possibly at other PRDOE schools.

Pursuant to the Agreement, the PRDOE will notify all PRDOE school directors and school Councils/Boards, including the Director at the School and the School's Council/Board, that they must not discriminate on the basis of disability in the administration of their uniform policies, including that schools must not assign students' school uniforms based on students' disability status and/or assignment to any special education programs/classrooms, or otherwise require, on the basis of disability, that students with disabilities wear school uniforms that are different from the uniforms worn by students without disabilities. In addition, the Agreement will require all PRDOE schools to notify staff, parents/guardians, and students at the schools about their schools' current/updated uniform policies, including to clarify that the schools will not assign students' school uniforms based on disability and/or assignment to any special education programs/classrooms and that they may contact their schools' Section 504/Americans with Disabilities Act of 1990 Coordinator to file a complaint of discrimination pertaining to the schools' uniform policies for school year 2021-2022. The Agreement further requires the PRDOE to provide training to the directors and Councils/Boards of all its schools regarding the PRDOE's obligations under Section 504 and Title II, including the prohibition against discrimination on the basis of disability, and prohibition against providing separate aids, benefits, or services to individuals with disabilities.

OCR will monitor the PRDOE's implementation of the Agreement. Upon the PRDOE's compliance with the terms of the Agreement, with Section 504 and its implementing regulations at 34 C.F.R. Part 104 and Title II and its implementing regulations at 28 C.F.R. Part 35, which were at issue in this case, OCR will close the case.

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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law

enforced by OCR. If this happens, the individual may file another complaint against the PRDOE with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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 this matter, please contact Joy Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or 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/

Rachel Pomerantz

cc: Monica Pascual, Esq.
Jennifer Mauskapf, Esq.

Attachment