



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

32 OLD SLIP, 26th FLOOR
NEW YORK, NY 10005-2500

REGION II
NEW JERSEY
NEW YORK
PUERTO RICO
VIRGIN ISLANDS

June 30, 2016

Rafael Roman Melendez
Secretary of Education
Puerto Rico Department of Education
P. O. Box 190759
San Juan, Puerto Rico 00919-0759

Re: Case No. 02-14-1130
Puerto Rico Department of Education

Dear Secretary Melendez:

This letter is to notify you of the determination made by the U.S. Department of Education, New York 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 her son (the Student), on the basis of his disability, by failing to provide him with: (a) assistive technology; (b) neuropsychological evaluations; (c) transportation services; and (d) auditory therapies, as required by the Student's Programa Educativo Individualizado (PEIs)¹ from school year 2013-2014 to the present.

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. OCR also is 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.

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires recipients to provide a free, appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction. The provision of an appropriate education is the provision of regular or special education and related aids and services that are (i) designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met; and (ii) based upon adherence to procedures that satisfy the evaluation and placement requirements of §§ 104.34, 104.35 and 104.36. The regulation implementing Section 504, at § 104.33(b)(2), states that the implementation of a PEI developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this requirement.

¹¹ An Individualized Education Program (IEP) is referred to as a PEI in Puerto Rico.

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

With respect to Allegation 1, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide him with assistive technology evaluations, as required by his PEIs during school year 2013-2014. OCR determined that the Student's PEIs for school year 2013-2014, dated XXXX, 2013, and XXXX, 2014 (the Student's PEIs), both stated that the Student should be evaluated for assistive technology. OCR determined that on XXXX, 2014, the PRDOE completed a partial evaluation of the Student's need for assistive technology; however, the PRDOE did not provide the complainant with the report and the recommendations of the evaluator. Further, the PRDOE's Comité de Planificación y Ubicación (COMPU) did not convene to discuss the Student's assistive technology evaluation. OCR determined that the PRDOE did not complete the second part of the Student's assistive technology evaluation, which was scheduled for XXXX, 2014. The PRDOE has not provided a response to OCR's request for copies of the Student's assistive technology evaluations.

Based on the above, OCR determined that the evidence was sufficient to substantiate the complainant's allegation that the PRDOE violated the regulation implementing Section 504, at 34 C.F.R. § 104.33, by failing to provide the Student with assistive technology evaluations, as required by his PEIs during school year 2013-2014.

On June 21, 2016, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified with respect to Allegation 1. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 2, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with a neuropsychological evaluation, as required by his PEIs during school year 2013-2014. The complainant later clarified that she requested a neuropsychological evaluation for the Student, but the COMPU denied her request.

OCR determined that the Student's PEIs did not specify that the Student should undergo a neuropsychological evaluation during school year 2013-2014. Therefore, OCR determined that the PRDOE was not required to grant the complainant's request for a neuropsychological evaluation, as the COMPU did not deem it necessary for the Student. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with a neuropsychological evaluation as required by his PEIs during school year 2013-2014. Therefore, OCR will take no further action with respect to Allegation 2.²

With respect to Allegation 3, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide the Student with transportation services from XXXX 2013 to XXXX 2014, as required by the Student's PEIs during school year 2013-2014. The complainant asserted that instead she had to transport the Student to and from her residence to the Student's school via her personal car, from XXXX 2013 through XXXX 2014; and, that she incurred costs for transporting the Student, including for gasoline.

² To the extent that the complainant disagrees with the COMPU's decision, it is OCR's policy to refrain from assessing the appropriateness of decisions made by a group of knowledgeable persons, such as a COMPU, convened for the purpose of evaluating a student and/or making determinations about a student's placement, including decisions regarding whether a student is eligible for an evaluation for specific related aids and services. Any disagreement between the complainant and the group should be addressed through a due process hearing. A due process hearing officer is empowered to review the determinations made by the group of knowledgeable persons. The complainant may exercise the right to due process by contacting the PRDOE in writing.

OCR determined that the Student's PEI required that the PRDOE provide the Student with transportation, and an aide for transportation, on a daily basis. The PRDOE acknowledged that it failed to provide transportation for the Student from XXXX 2013 through XXXX 2014. OCR determined that the failure to provide the transportation services was due to the failure of a PRDOE employee to complete and submit the appropriate paperwork. OCR determined that the PRDOE began providing the required transportation services and transportation aide to the Student in XXXX 2014, and continued to provide the required services through the end of school year 2013-2014.

The PRDOE stated that it offered to reimburse the complainant at the rate established by the PRDOE in its transportation policy for the time that transportation was not provided. The PRDOE's "Criteria for Eligibility for Transportation Services for Students with Disabilities" (transportation policy) allows for the reimbursement of transportation at a rate of \$ 7.00 for the Student.³

OCR determined that in or around April 2014, the complainant refused to sign documentation agreeing to accept the reimbursement that the PRDOE offered, which was the flat rate of \$7.00; asserting that the PRDOE failed to provide her with an appropriate reimbursement. Specifically, the complainant asserted that the PRDOE should have reimbursed her for costs for gasoline⁴, and for the mileage she used to return home after she dropped the Student off and returned to pick him up. The complainant advised the PRDOE that she should at least be provided double the rate (\$14.00), since she accompanied the Student. The PRDOE stated that they would only double the reimbursement to \$14.00 if an aide had accompanied the Student to school, not the parent accompanying the Student.⁵

Based on the above, OCR determined that the evidence was sufficient to substantiate the complainant's allegation that the PRDOE violated the regulation implementing Section 504, at 34 C.F.R. § 104.33, by failing to provide the Student with transportation services from XXXX 2013 to XXXX 2014, as required by the Student's PEIs during school year 2013-2014.

On February 15, 2016, the PRDOE representative informed OCR that the PRDOE had provided the complainant with a check reimbursing her for transportation costs for transporting the Student to and from school, incurred for the period from XXXX 2013 to XXXX 2014. On February 26, 2016, during a conversation with OCR staff, the complainant acknowledged that she had received the reimbursement check and considered her individual transportation allegation resolved. Accordingly, OCR determined that Allegation 3 is resolved with respect to the issue of reimbursement to the complainant.

With respect to Allegation 4, the complainant alleged that the PRDOE discriminated against the Student, on the basis of his disability, by failing to provide him with auditory therapies as required by his PEIs during school year 2013-2014. OCR determined that the Student's PEIs for school year 2013-2014 specify that the Student should be provided with auditory therapy daily, two hours per day, at the XXXXX XXXXX in XXXXXXXXXX, with transportation to and from the XXXXXXXX XXXXXXXX in XXXXXXXX to be provided by the PRDOE. In OCR's data request to the PRDOE dated April 25, 2014, OCR requested that the PRDOE provide documentation to OCR supporting that from XXXX 2013 to the present, the Student has received auditory therapies as required by his PEI. OCR also requested that the PRDOE state the frequency and duration and/or

³ The Student's PEI states that he would be transported by a public transportation contractor. According to the PRDOE, the routes of the public transportation contractors are established by the Puerto Rico Department of Public Works, based on established municipal routes. The transportation policy states that transportation services will be reimbursed at the municipal route rate for the public transportation contractor. The established municipal route rate for the Student is \$7.00 from his home to the School.

⁴ However, the complainant did not have receipts to prove her gasoline expenses.

⁵ OCR determined that the PRDOE's "Directives for Transporting Students in Special Education for school year 2013-2014," page - 3, states that the PRDOE will only consider reimbursing the individual accompanying the Student for transportation costs when the COMPU has evidence that the parent and the Student used public transportation.

dates such services were provided, as well as the name(s) of the individual(s) who provided such services. On July 31, 2014, the PRDOE informed OCR that it had arranged for the Student to begin receiving auditory therapy as prescribed by his PEI beginning in XXXX 2014; however, the PRDOE has not provided OCR with the response to its data request.

On June 21, 2016, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified with respect to Allegation 4. 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 he or she has filed a complaint or participated in the complaint resolution process. If this should occur, the complainant may file a separate complaint alleging such harassment or intimidation.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Genara Necos, Compliance Team Attorney, at (646) 428-3828 or genara.necos@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/S/

Timothy C.J. Blanchard