

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

May 21, 2015

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

Re: Case No. 02-15-1090

Puerto Rico Department of Education

Dear Secretary Roman 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) in the above-referenced complaint filed against the Puerto Rico Department of Education (PRDOE). The complainant alleged that the PRDOE discriminated against her daughter (the Student), on the basis of her disability, by failing to provide the Student with (a) occupational therapy from August 2014 through October 2014; and (b) XXXXXX XX XXXXXX, as required by her individualized education program (IEP) for school year 2014-2015. 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. 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 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 and the PRDOE submitted. OCR made the following determinations.

The complainant alleged that the PRDOE discriminated against the Student, on the basis of her disability, by failing to provide the Student with occupational therapy from August 2014 through October 2014, and failing to

¹ The complainant originally alleged that the PRDOE discriminated against the Student, on the basis of her disability, by failing to provide the Student with (a) a school placement; (b) physical, psychological, occupational and speech and language therapies; and (c) a lift and stretcher, as required by her IEP for school year 2014-2015. During the course of OCR's investigation, the complainant clarified her complaint allegations as stated above.

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 an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting the requirement to provide regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled student.

Based on the above, OCR determined that there was sufficient evidence to substantiate the complainant's allegation that the PRDOE discriminated against the Student, on the basis of her disability, by failing to provide the Student with her occupational therapy sessions from August 2014 through October 2014 as required by her IEP for school year 2014-2015. Further, OCR determined that the PRDOE discriminated against the Student, on the basis of her disability, by failing to provide the Student with XXXXXXXXXXXXXXXX as agreed upon by the COMPU on August XX, 2014. On May 21, 2015, the PRDOE agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the PRDOE fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the PROE 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 complainant may file another 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 Jeanette Tejada Bustos, Compliance Team Attorney, at (646) 428-3777 or jeanette.tejadabustos@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

Encl.

cc: XXXXXXXXX, Esq.