



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 28, 2018

VIA EMAIL ONLY

Via Email/ president@psu.edu

Dr. Eric J. Barron
President
Pennsylvania State University
201 Old Main
University Park, PA 16802

Re: OCR Complaint No. 03-18-2103

Dear Dr. Barron:

This to advise you of the resolution of the complaint filed with Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against Pennsylvania State University (the University). Specifically, the Complainant alleged that the University discriminates against individuals with disabilities because:

1. The University has a policy regarding service animals which inquires about the nature and severity of a person's disability and also excludes service animals from certain areas of the University; and
2. The University's policy regarding emotional support animals indicates they are only allowed in University housing.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulation, at 34 C.F.R. Part 104 which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, at 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against public entities. As a recipient of Federal financial assistance and a public entity, the University is subject to the provisions of Section 504, Title II, and their implementing regulations.

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Voluntary Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Voluntary Resolution Agreement.

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

Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis on disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.44(b), provides that recipients may not impose upon students with disabilities rules that have the effect of limiting the participation of students with disabilities in the recipient's education program or activity.

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Section 504 regulation, at 34 C.F.R. § 104.44(a), provides that a post-secondary institution must make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating against a qualified individual with a disability. Modifications may include an adaptation in the manner in which specific courses are conducted. Despite this requirement, post-secondary institutions are not required to modify academic requirements that would constitute a fundamental alteration to the program of instruction.

The Title II regulation, at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. The Title II regulation also requires public entities to make reasonable modification to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity.

The Title II regulation, at 28 C.F.R. §35.136(g), states, “Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.” The regulation at 28 C.F.R. §35.136(a) states that, “Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.” The regulation at 28 C.F.R. §35.136(f) states that a public entity is prohibited from asking about the nature or extent of a person's disability, and may only make two inquiries to determine whether an animal qualifies as a service animal: 1) if the animal is required because of a disability, and 2) what work or task the animal has been trained to perform. A public entity may properly exclude a service animal if: (1) the service animal is out of control and the animal's handler does not take effective action to control it; or (2) the service animal is not housebroken. 28 C.F.R. §35.136(b).

Findings of Fact

OCR reviewed the University's policies and procedures for processing requests for service animals and emotional support animals.

The University's policy on service animals is currently under University review. The policy correctly defines service animals and describes some of the limitations in accordance with the applicable regulations. However, the policy also instructs individuals that they are required to undergo the reasonable accommodation process, which includes disclosure of the disability, in order to request a service animal to accompany them on campus. A public entity such as the University is not permitted to ask about the nature or extent of a person's disability for the purposes of permitting a service animal on campus. The University may not require persons to engage in the interactive process to obtain a service animal on campus, nor may the University require an individual to register a service animal.

The form itself for requesting a service animal in housing poses questions to the requesting individual which are permissible under Title II. The form also contains a checkbox where an individual can elect to allow the University to contact outside persons (such as a doctor) with questions about the service animal, which may lead to the posing of questions which are not permissible under the ADA.

Emotional Support Animals (ESAs) are not considered service animals under the ADA, but they may be considered as a necessary accommodation under Section 504 or a necessary modification under Title II and an institution would have an obligation to engage in a reasonable process to assess an individual's need for this accommodation. The University does not have a specific policy on ESAs, but there is a form for requesting an ESA in University Housing that says ESAs are limited to student housing and that they are not allowed in places of public access. OCR would expect the University to engage in a reasonable process with a student, which would include reviewing ESA requests on a case-by-case basis, and reviewing accommodation requests as it would for other types of accommodations.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, on July 6, 2018 the University requested to resolve the complaint through a Voluntary Resolution Agreement. On August 24, 2018, the University signed the enclosed Voluntary Resolution Agreement which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in the case.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University'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 University 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, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Christina Haviland, the attorney assigned to this case, at 215-656-5805.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office

Enclosure

cc: Alan S. Finnecy, via email