



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

November 17, 2022

IN RESPONSE, PLEASE REFER TO: 03221296

VIA E-MAIL ONLY: ksykes@seedschoolmd.org

Kirk Sykes
Head of School
The SEED School of Maryland
200 Font Hill Avenue
Baltimore, MD 21223

Dear Mr. Sykes:

This is to advise you of the resolution of this complaint that was filed with the U.S. Department of Education's Office for Civil Rights (OCR) against the SEED School of Maryland (the School). The Complainant alleges that the School discriminated against her on the basis of her disability when it did not permit her to attend the pinning ceremony of XXXXXX the Student X with her service animal on XXXXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and a public entity, the School is subject to Section 504, Title II, and their implementing regulations.

Before OCR completed its investigation, the School expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM) by taking the steps set out in the enclosed Voluntary Resolution Agreement, which when fully implemented will resolve this complaint. 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.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be

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

subjected to discrimination in a school's programs or activities on the basis of disability. The Title II regulation contains a similar prohibition, at 28 C.F.R. § 35.130(a).

The Title II regulation also requires public schools to make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity. The Title II regulation, at 28 C.F.R. § 35.136, provides that public schools generally must modify its policies, practices, or procedures to permit individuals with disabilities to use service animals. The regulation, at 28 C.F.R. § 35.104, defines a service animal as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." The regulation, at 28 C.F.R. § 35.104, provides a non-exhaustive list of examples of work or tasks that may be performed by a service animal including "helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors."

Under the Title II regulation, at 28 C.F.R. § 35.136, persons with disabilities have the right to be accompanied by service animals in all parts of facilities where the public, participants in programs and activities, or invitees are allowed. Public schools are not permitted to ask about the nature or extent of a person's disability or require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. If it is not readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, public schools are permitted to 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. In addition, if admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. 28 C.F.R. § 35.130(b)(7).

Factual Background

The Complainant informed OCR that as a result of her disabilities she has a service dog which is trained to perform certain tasks.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. On XXXXXXXX the Student attended the School's pinning ceremony XXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXX. The Student invited her sister, the Complainant, to attend the pinning ceremony. It is undisputed that the Complainant was not permitted to attend the pinning ceremony, held inside, with her dog.

In her complaint, the Complainant explained that the Student asked the School about whether the Complainant could bring the dog to the ceremony, but the School told the Student the dog would not be allowed in the building. The Complainant stated while she and her mother XXXXXXXX XXXXXXXXXXXXXXX were driving to the pinning ceremony, her mother contacted the School via phone to inquire about the dog. According to the Complainant, her mother spoke with Student's Counselor, the Assistant Principal, and the Principal, all of whom indicated the Complainant was not allowed to bring the service animal into the School. The Counselor asked whether the Complainant was in a wheelchair or blind, before saying the dog would not be

allowed in the School. The Assistant Principal reiterated the policy outlined by the Counselor and stated the School did not have an accommodation for the dog.

According to the School, on the morning of the ceremony, the Student asked an employee if the Complainant could bring a service dog to the pinning ceremony. The Student was informed that due to allergies, etc. of staff and members, the School was unable to accommodate the Complainant's request. The School reported to OCR that several of its employees were involved in this decision but that the School did not have a policy, formal or otherwise, regarding service animals. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The School also informed OCR that School personnel did not recall the Complainant or her mother informing them that the dog was a service animal. Nevertheless, the School maintains even if it had known the dog was a service animal, the School responded appropriately given the timing of the request.

Conclusion

Based on OCR's investigation to date, OCR has concerns that the School did not make the proper inquiries in determining whether the dog could accompany the Complainant to the pinning ceremony. However, pursuant to Section 302 of OCR's *Case Processing Manual*, the School requested to resolve the case through a voluntary resolution agreement on September 26, 2022 and OCR determined such a resolution was appropriate. The School signed the enclosed Voluntary Resolution Agreement on November 16, 2022, which when fully implemented, will address the evidence obtained and all of the allegations investigated 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 School's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School'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 School 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 School's cooperation in the resolution of this complaint. If you have any questions, please contact Sarah Haake at sarah.haake@ed.gov; 215-656-6416.

Sincerely,

/s/

Catherine C. Deneke
Supervisory Attorney
Philadelphia Office

Enclosure

cc: Michael A. Pavlick, Counsel for the SEED School of Maryland