



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

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

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.

XX. On XXXXXXXX the Student attended the School’s pinning ceremony XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX. 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 XXXXXXXXXXXXXXXXXXXXXXXX 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

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