



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

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REGION IV  
ALABAMA  
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March 26, 2015

Dr. Robert A. Altenkirch  
President  
University of Alabama at Huntsville  
301 Sparkman Drive  
Huntsville, Alabama 35899

Re: Complaint #04-13-2461

Dear Dr. Altenkirch:

The above-referenced complaint, which was received by the U.S. Department of Education (Department), Office for Civil Rights (OCR), on July 10, 2013, was filed against the University of Alabama at Huntsville (University) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the University discriminated against her daughter (Student) with regard to her service animal (a cocker spaniel) when:

- The University asked the Student to provide documentation that her dog was a service animal and verification it had been trained.
- The Student's dog was not allowed to attend classes or live in the dorms with the Student;
- The University required the Student to obtain additional training for her dog at personal expense to the family, which she did; and
- The University treated the Student differently on the basis of her race (African American) by requiring the Student to adhere to a more stringent policy than was required of white students with service animals.

**Legal Issues**

OCR opened the following legal issues for investigation:

1. Whether the University discriminated against the Student on the basis of disability by making an impermissible inquiry regarding the Student's service dog, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.136 (a) and (f).
2. Whether the University improperly excluded the Student's service dog from all or part of the University Campus, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.136(a), (b), and (g).

3. Whether the University required the Student to obtain additional training at her expense for her service dog, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.4 and Title II implementing regulation at 28 C.F.R. § 35.136 (a) and (h).
4. Whether the University treated the Student differently based on race with regard to the Student's request to use a service animal, in noncompliance with the Title VI implementing regulation at 34 C.F.R. §100.3 (b)(i)-(iv), and (vi).

OCR found noncompliance with respect to the University's Service Animal Policy, Grievance Procedures, and issues #1 and #2. Prior to the conclusion of the investigation, the University offered to enter into a Resolution Agreement (Agreement) to resolve the complaint and pursuant to OCR's *Complaint Processing Manual* (CPM) at § 302 OCR has accepted that offer with respect to issues #3 and #4.

### **Legal Standards**

#### *Service Animals*

The Title II regulations pertaining to Service Animals are found at 28 C.F.R. §§ 35.104 and 35.136. The Title II regulation at 28 C.F.R. §35.104, in relevant part, 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 work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

The Title II regulation at 28 C.F.R. § 35.136 (a) provides that 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 Title II regulation at 28 C.F.R. § 35.136 (b) provides that a public entity may ask an individual with a disability to remove a service animal from the premises if: (1) The animal is out of control and the animal's handler does not take effective action to control it; or (2) The animal is not housebroken. The regulation at 28 C.F.R. § 35.136(c) provides that if a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises. The regulation at 28 C.F.R. § 35.136 (d) provides that a service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

The regulation at 28 C.F.R. § 35.136(f) governs inquiries and documentation. That regulation provides that a public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The Title II regulation at 28 C.F.R. § 35.136(g) states that 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.

Improper exclusion of a service animal can result in persons with disabilities being subjected to different treatment or exclusion from participation in, denial of the benefits of, or otherwise being subjected to discrimination under a recipient's programs or activities.

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a), (b)(1)(iii) and (b)(2) provides no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. The regulation at (b)(1)(iii) provides that a recipient, in providing an aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability“ provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others.” The regulations provide that: “(b)(2) aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for persons with disabilities and persons without disabilities, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.” The Section 504 regulations at 34 C.F.R. §104.43(a) for post-secondary education contain similar prohibitions against disability discrimination. Additionally, the Title II regulations at 28 C.F.R. § 35.130(a) and (b)(1)(iii) include similar provisions.

## **Factual Background**

### University Service Animal Policy

The Complainant submitted a copy of the University's Service Animal Policy (Policy) with her complaint filing. The University submitted a copy of its Policy to OCR with its data response. The Policy, as produced by the University, contains changes from that which was provided by the Complainant.

The Policy states that the University is committed to compliance with state and federal laws regarding students with disabilities. All requests for Service Animals should be directed to the Coordinator of Disability Services [contact information provided]. The University will determine, on

a case-by-case basis, and in accordance with applicable laws and regulations, whether the animal is a reasonable accommodation on campus.

The Policy includes a list of definitions, including a definition of disability and a service animal. The Policy states that a service animal is defined by the Americans with Disabilities Act (ADA) as a dog or miniature horse individually trained to do work or perform tasks for the benefit of an individual with a disability. Work or tasks performed by the service animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. Therapy animals and companion animals are not service animals under the ADA.

The Policy also states that a person desiring the assistance of a service animal to use university facilities and services must provide verification to the University office of Disability Services that he or she has a qualifying disability based upon two questions: Is the animal a service animal required because of a disability and what work or task has the service animal been trained to perform. The Policy states that a service animal is permitted to accompany the student anywhere the student goes on campus with the following exceptions: because of chemicals being present, research laboratories, mechanical rooms/custodial closets, or any other possible dangerous areas, such as rooms with sharp metal cuttings or glass shards on the floor, hot material such as molten metal; excessive dust; or moving machinery may pose a danger to the service animal.

The University's Policy is not consistent with the requirements of Section 504 and Title II, and is not consistent with guidance published by the U.S. Department of Justice (DOJ).<sup>1</sup> The wording of the Policy implies that individuals seeking to use a service animal must prove that they have a disability. While the Policy includes the two questions permitted under the Title II standards, the subsection discussing the two questions is captioned "Verification of Disability" and the two questions are characterized as the method used for "Verification to the University office of Disability Services" that the individual "has a qualifying disability." Moreover, the definition of a "disability" within the Policy includes the following statement:

Acceptable documentation of a disability can be from either a medical or mental health provider. It should verify the disability as well as the need for a service animal.

Also the Policy does not incorporate the regulation's prohibition on making inquiries when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability. Further, the policy includes language which permits exceptions or exclusions not included in the Title II regulation. For example, the Policy at Item X titled "Campus Access for Service Animals" provides that a service animal cannot accompany an individual with a disability in certain areas which may be "dangerous" to the animal; examples of such areas include custodial closets and areas with "excessive dust."<sup>2</sup> Finally, OCR notes that the Policy states that the Title II definition of a service animal includes miniature horses. While the Title II regulation at 28 C.F.R. §35.136(i)

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<sup>1</sup> This guidance is available at [http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)

<sup>2</sup> As noted in the Title II regulation, one of the purposes which might be served by a service animal is alerting individuals to the presence of allergens.

discusses the obligation to make reasonable modifications with respect to miniature horses, the definition of “service animal” refers only to dogs.

### Grievance Procedures

Although the Complainant did not allege a concern regarding the University’s grievance procedures, OCR reviewed the University’s grievance procedures and found that they do not comply with the Section 504 regulation at 34 C.F.R. § 104.7(b) and Title II regulation at 28 C.F.R § 35.107.

In determining whether grievance procedures provide for a prompt and appropriate response OCR considers whether the procedures provide for (*at a minimum*):

1. notice to students and employees of the grievance procedures, including where complaints may be filed;
2. application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other students, or third parties;
3. provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence;
4. designated and reasonably prompt time frames for the major stages of the complaint process;
5. written notice to the complainant and the alleged perpetrator of the outcome of the complaint; and
6. assurance that the school will take steps to prevent recurrence of any disability-based harassment and remedy discriminatory effects on the complainant and others, if appropriate.

OCR found that the University’s grievance procedures require that all complaints be in writing, do not have timeframes associated with each step of the grievance process including the investigation and appeal, do not require a copy of the written findings be provided to the Complainant and do not designate an alternative person to receive complaints in the event that the person designated to receive complaints is the alleged discriminating official or employee.

### Conclusion

Based on the foregoing, OCR finds that the University’s service animal policy and grievance procedures are in noncompliance with the Section 504 and Title II regulations. The University will remedy the concerns addressed above as a part of the enclosed Agreement, which when fully implemented, will resolve this issue in this complaint. OCR will monitor the University’s implementation of the Agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

**Issue #1: Whether the University discriminated against the Student on the basis of disability by making an impermissible inquiry regarding the Student’s service dog, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.136 (a) and (f).**

OCR reviewed the evidence under the preponderance standard to determine whether the University made an impermissible inquiry as alleged. The University's March 1, 2013, email to the Complainant shows that the University made an impermissible inquiry concerning the Student's service dog's training. Specifically, the Complainant was asked whether the animal had been trained to perform a specific task related to the disability and to bring the documentation to the meeting supporting that the dog has been trained to perform a specific task. As noted in the legal standards, while the University may ask what work or task the animal has been trained to perform, is not permissible to ask for proof that the animal has been trained.

Based upon the foregoing, the evidence is sufficient to establish that the University is in noncompliance with Section 504 and Title II with respect to issue #1 as alleged. The University entered into the enclosed Agreement, which when fully implemented, will resolve this issue in this complaint. OCR will monitor the University's implementation of the Agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

**Issue #2: Whether the University improperly excluded the Student's service dog from all or part of the University Campus, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.136 (a), (b), and (g).**

The University acknowledges in its data response to OCR that the first request by the Student to bring a service animal to school was made in June 2012 and the evidence shows the request was not approved until March 4, 2013, which was almost one year later. There is no evidence that the University had a reason to believe the animal was out of control, that the Student did not take effective action to control it or that the animal was not housebroken. Thus, there was no evidence of a basis for either of the exceptions set forth in the Title II regulation at 28 C.F.R. § 35.136. Based upon the foregoing the evidence is sufficient to establish that the University is in noncompliance with respect to issue #2. The University entered into the enclosed Agreement, which when fully implemented, will resolve this issue in this complaint. OCR will monitor the University's implementation of the Agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

**Issues #3: Whether the University required the Student to obtain additional training at her expense for her service dog, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and Title II implementing regulation at 28 C.F.R. § 35.136 (a) and (h); and Issue #4: Whether the University treated the Student differently based on race with regard to the Student's request to use a service animal, in noncompliance with the Title VI implementing regulation at 34 C.F.R. § 100.3 (b)(i)-(iv), and (vi).**

As previously stated, prior to the completion of OCR's investigation, the University offered to resolve this complaint through a voluntary resolution agreement. Pursuant to OCR's *Complaint Processing Manual* (CPM) at § 302, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. Based on the foregoing, OCR accepted the University's request to resolve these issues of the complaint and the University entered into the enclosed Agreement, which when fully implemented, will resolve the issues in this complaint.

OCR will monitor the University's implementation of the Agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

If the University fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II

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 University 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, we 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.

This concludes OCR's consideration of this complaint. If you have any questions about this letter, please contact Cassandra Williams, Investigator, at (404) 974-9393, or Wendy Gatlin, Compliance Team Leader, at (404) 974-9356.

Sincerely,

Deborah Floyd  
Acting Regional Director