



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

September 28, 2015

Ms. Mary Ann Hodel
Library Director
Orange County Library
101 E. Central Boulevard
Orlando, Florida 32801

Re: Complaint #04-15-4024

Dear Ms. Hodel:

On April 8, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against the Orange County Library (Library) in Orlando, Florida, alleging discrimination on the basis of disability by denying the Complainant access to the Library when accompanied by her service dog. Specifically, the Complainant alleged that on February 15, 2015, she was told by a Library official to leave the library because her dog did not qualify as a service dog, and that she may not return to the library with her dog.

OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a public entity, the Library is subject to these laws. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the legal issue of whether the Library discriminated against the Complainant on the basis of disability by excluding the Complainant from the Library, when accompanied by her service dog, in violation with the Title II implementing regulation at 28 C.F.R. § 35.136 (a), (b),(f) and (g).

Regulatory Standards

The Title II regulations at 28 C.F.R. §§ 35.130(a) and (b)(1)(vii) generally provide that 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 limited in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service from a public entity.

The term “service animal,” is defined in 28 C.F.R. § 35.104, 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 implementing regulation at 28 C.F.R. § 35.136(a) requires public entities, generally, to modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.¹ A public entity may properly exclude a service animal if (1) the dog is out of control and the animal's handler does not take effective action to control it; or (2) the dog is not housebroken (i.e. trained so that absent illness or accident, the dog controls its waste elimination). 28 C.F.R. § 35.136(b). However, a public entity is not responsible for the care or supervision of a service animal.

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, as stated in 28 C.F.R. § 35.136(g).

Pursuant to 28 C.F.R. § 35.136(f), a public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether a dog qualifies as a service animal: (1) whether the dog is required because of a disability and (2) what work or task the dog has been trained to perform. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that the dog is trained to do work or perform tasks for an individual with a disability. A public entity shall not require documentation, such as proof that the dog has been certified, trained, or licensed as a service animal. Nor shall a public entity ask or require an individual with a disability to pay a surcharge for using a service animal. 28 C.F.R. § 35.136(h).

Title II also contains procedural requirements for public entities with 50 or more employees requiring notice and publication of a nondiscrimination statement, designation of an employee to oversee compliance with Title II and grievance procedures for complaints of discrimination. 28 C.F.R §§ 35.106 and 107.

OCR reviews evidence under a preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR evaluates the evidence obtained during an investigation to determine whether the greater weight of the evidence was sufficient to support a conclusion that the recipient failed to comply with a law or regulation enforced by OCR, or whether the evidence was insufficient to support such a conclusion.

Factual Findings

OCR interviewed the Complainant and reviewed information provided by the Complainant including the March 11, 2015 decision letter she received from the Library regarding her appeal to allow her service animal in the Library, documentation of training provided to her service dog and the police

¹ Publications by the U.S. Department of Justice on service animals requirements under Title II are also available: http://www.ada.gov/service_animals_2010.htm, http://www.ada.gov/regs2010/service_animal_qa.html

report from the Complainant's contact with a local police officer on February 15, 2015. OCR also reviewed detailed information provided by the Library's attorney, including the same information provided by the Complainant, as well as internal emails by Library staff reciting their factual statements of their encounters with the Complainant and her dog, the complaint the Complainant filed with the Library Board, the medical information from the Complainant's physician and the Library's Rules of Conduct. After a thorough review of all of the available evidence, OCR has determined, based upon the preponderance of the evidence, that there is sufficient evidence to establish that the Library is in violation with Title II, as alleged. The basis for OCR's decision is set forth below.

According to the written statements from two Library desk staff persons working on February 10, 2015, when the Complainant walked up to their desk with her dog wearing a red diaper, one desk staff person asked the Complainant what type of service the dog provides and the Complainant reportedly responded that "this dog reminds that I am an American citizen who has the right to take my dog anywhere I go" [sic]. The desk staff person then rephrased the question and asked what type of service is the dog trained to perform and the Complainant replied "the dog reminds me to take my medication." The written statement says the Complainant asked "do you know how he reminds me to take my medication" and then the Complainant began imitating a barking dog noise. The Complainant said she was kidding; and said "when I feed him, it reminds me to take my medication". The desk staff person went to get a Library Manager and upon returning, saw that the Complainant was gone.

According to the Assistant Manager on duty on February 15, 2015, the Complainant returned with her dog, but this time the dog was not wearing a diaper, and the Assistant Manager advised the Complainant that administration had determined that based on the information the Complainant had given previously to other Library staff, the Complainant's animal was not considered a service animal. The Complainant asked if the Assistant Manager wanted to ask her the two service animal questions and the Assistant Manager declined saying his understanding was that the dog helped remind her to take her medication. The Complainant replied this was correct and asked why the administration decided that her dog was not a service animal. The Assistant Manager indicated that he "was not in on the entire discussion" but his impression was that based on some information provided by staff in previous discussions, it may be possible that administration perceived this as an emotional support animal which is not permitted. The Complainant stated she understood the rules about emotional support animals, and that her dog was indeed a service animal.

The Complainant also requested assistance on how to file an ADA complaint from a police officer at the library that day. The Complainant informed the police officer that she was denied entry with her service dog because the Assistant Director did not believe that a dog being trained to alert the Complainant to take her medication qualified the dog as a service animal. The police officer memorialized the Complainant's statement.

In a complaint to the Library Board sent via email on February 20, 2015, the Complainant reiterated the same facts stated in the police report. She also stated she had asked the police officer to inquire with the Library about filing a grievance and the officer gave the Complainant the Director's business card and stated she should check on the Library's website. The Complainant's email further points out that she called the Director and told her that the Library's

website had no grievance procedures, only an appeal process for trespass warnings, and the Complainant advised the Director that she was trying to avoid “that process”. The Complainant’s email stated the Director told her she could go to the Board meeting but she could not return to the Library with her service dog. The Complainant closed her email by asking the Board to please contact her with an appropriate way to have her grievance addressed.

OCR also reviewed an email to the Library Director from a disability advocate, attaching a letter dated March 6, 2015, in which the Complainant’s physician stated she was under his “professional care and treatment defined by the ICD-9-CM that substantially limits one or more major activities,” that the Complainant “is requesting reasonable accommodations.....on behalf of herself and service dog to have an equal opportunity for the use and enjoyment of her dwelling and to live independently.” The doctor’s letter states the Complainant’s service dog is:

“Individually trained to assist her serving as a grounding brace and is individually trained to remind/alert her to use prescribed therapy.”

In a letter dated March 11, 2015, the Library Director informed the Complainant that based on the information the Library has, it appeared her dog did not meet the definition of a service animal under the ADA, and concluded that the Complainant may return to the Library but may not bring her dog. The letter summarized the facts, as indicated above by the Library staff in their statements regarding their interactions with the Complainant, and also summarized the physician’s letter. The Director then stated that:

“The [physician’s] letter’s assertion that your dog is individually trained is in conflict with the information you earlier provided to the Library staff regarding the dog’s role in reminding you to take your medication. Further, the letter does not include any specific work or tasks that your dog is individually trained to perform beyond merely being present with you.”

OCR asked the Complainant to explain the comments she made to Library staff on February 10, 2015. The Complainant informed OCR that when she said she was joking, she meant she was joking about barking like a dog, and that her service dog also provides her balance for fatigue and vertigo which is very important. She reported that since she moved near the Library in January 2015, she had visited the Library frequently, on /approximately a weekly basis, so she could use their computers to look for jobs. She always had her service dog with her when she visited the Library. Many times staff asked her questions about the dog such as why the dog did not have equipment or something like that (because the dog does not wear a vest), while other times she visited, and no one asked her anything so she had no problems. She stated there should be records of her logging in. She said she has told Library staff several times that she is an American citizen protected by the Americans with Disabilities Act. She now has a job so she was able to buy the dog a vest but she has not returned to the Library since receiving the letter because she is afraid of being cited for trespass. The Complainant informed OCR she wanted to file a grievance but there was no procedure for that and although she was told she could attend the Library Board meeting, she was told she could not bring her service dog so that would not be an option for her.

OCR confirmed in the records provided that the Library's appeal procedure is for trespass warnings and since the Complainant was never issued such a warning, this process is not applicable. Moreover, Title II requires a grievance process that provides for the prompt and equitable redress of complaints of discrimination based on disability. Title II also requires a notice of nondiscrimination for public entities and the Library has two policies which state that it does not discriminate on the basis of disability (Equal Employment Opportunity and Harassment); however, those policies fail to designate an official to oversee compliance with Title II.

Analysis and Conclusion

The ADA standard requires public entities to modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. The standard also allows public entities to exclude a service animal if (1) the dog is out of control and the animal's handler does not take effective action to control it; or (2) the dog is not housebroken. The evidence shows that Library staff questioned the validity of the dog's status as a service animal. The Library was permitted to make only two inquiries into the animal's status, including whether the dog is required because of a disability and what work or task the dog has been trained to perform. After inquiring and receiving a sufficient answer from the Complainant that she needs the dog to remind her to take medication/prescribed therapy, the Complainant reportedly barked like a dog, but said she was joking and then mentioned she remembers to take her medication when she feeds the dog. The Complainant's statement does not serve to disprove that the dog is not a service animal. The Library was also provided a statement from the Complainant's physician stating that the dog is individually trained to remind/alert her to use prescribed therapy and serve as a grounding brace. Based on a review of the evidence provided by the Library, OCR has determined that Library staff should have permitted the Complainant to enter the Library with her dog pursuant to Title II.

Additionally, there is no evidence in the record that the Library had a reason to believe the exceptions that the animal was out of control or that the animal was not housebroken applied. Further, there is no evidence that allowing the Complainant to use her service animal would fundamentally alter the nature of the Library's service, program, or activity, or if it would pose a direct threat to the health or safety of others. Based on the foregoing, there was no evidence of a basis for the exceptions set forth in the Title II regulation at 28 C.F.R. § 35.136 that warrant excluding a service animal from the premises. Therefore, the evidence is sufficient to establish that the Library is in violation with Title II regulations with regard to service animal requirements. As noted above, the Library is also in violation with the procedural requirement of the Title II regulations.

The Library will remedy the concerns addressed above as a part of the enclosed Agreement, which when fully implemented, will resolve the issue in this complaint. The Agreement requires the Library to submit a letter of apology and rescission to the Complainant, revise its service animal policy and procedure, develop grievance procedures, identify in its policies and procedures a person responsible for responding to complaints, train its staff on its revised policies and procedures, and track service animal complaints.

OCR will monitor the Library's implementation of the Agreement until the Library is in compliance with the statutes and regulations at issue in the case. If the Library fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with 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 Library 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 Ms. Angela Collins, Senior Attorney, at (404) 974-9346, or me at (404) 974-9356.

Sincerely,

/s/

Wendy Gatlin
Compliance Team Leader

Enclosure

cc: Sarah N. Huff, Esq.
Counsel for the Library