



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

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ATLANTA, GA 30303-8927

REGION IV
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September 19, 2017

Mr. Shane Barnett
Superintendent
Cullman County Schools
P.O. Box 1590
Cullman, AL 35056-1590

Re: OCR Complaint #04-17-1114

Dear Mr. Barnett:

This is to advise you that the U. S. Department of Education (Department), Office for Civil Rights (OCR), is closing the above-referenced complaint filed against Cullman County Schools (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated against her son, a student in the District (Student), when it refused to allow him to ride the school bus to a field trip with his service dog.

As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of 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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. As a public entity, the University is subject to the provisions of 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. The District is a public entity and receives Federal financial assistance from the Department; accordingly, OCR has jurisdiction over this complaint pursuant to Section 504 and Title II.

OCR completed an investigation of the following legal issue:

Whether the District discriminated against the Student on the basis of his disability by refusing to allow him to ride the school bus to a field trip due to his disability (diabetes) and refusing to allow his service dog to accompany him on the school bus to a field trip, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(i) and the Title II implementing regulation at 28 C.F.R. §§35.130(a) and 35.136.

During the complaint resolution process, OCR reviewed documents provided by the District and the Complainant and conducted interviews with the Complainant and District staff. OCR reviewed the evidence under the preponderance standard to determine whether the District

discriminated against the Student on the basis of his disability by refusing to allow him to ride the school bus to a field trip due to his disability and refusing to allow his service dog to accompany him on the school bus to a field trip. Based upon the available evidence, OCR found sufficient evidence to support a finding that the District was in noncompliance with Section 504 and Title II with regard to these complaint allegations. Set forth below is a summary of OCR's findings.

Legal Standard

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. The Title II regulation provides that a public entity shall not ask about the nature or extent of a person's disability, but may make following two inquiries to determine whether an animal qualifies as a service animal: A public entity may ask, (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 shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service

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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. Additionally, the Title II regulations at 28 C.F.R. § 35.130(a) and (b)(1)(iii) include similar provisions.

Factual Findings

District Policy

The 2016-2017 Student handbook states that “no person shall, on the grounds of race, color, disability, sex, religion, national origin or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, activity, or employment.”

The District provided a copy of its revised “Procedures for Responding to Requests for a Student with a Disability to Bring a Service Animal to School” to OCR with its data response. The District's revised Service Animal Policy states that requests to bring a service animal on District property must be submitted in writing on a form, available in the Superintendent's Office, to the Superintendent within a reasonable time before bringing the service animal to school. The Policy clarifies that “a service animal may not be on school property without prior approval by the Superintendent or his/her designee.” The District's revised Service Animal Policy also advises that the District may require the submission of proof of immunization, proper licensing, and registration pursuant to State law. The Policy requires that the service animal wear a restraint mechanism unless it would interfere with the animal's safe, effective performance of work or tasks. The Policy states that the District retains discretion to exclude or remove the service animal from its property if: (1) the animal is out of control and/or the handler does not effectively control the animal's behavior, (2) the animal is not housebroken, (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated by making reasonable modifications, or (4) the animal's presence would constitute a fundamental alteration in the District's programs/activities. The Policy also details the District's grievance procedure.

The District's Procedure is not in compliance with the non-discrimination and Service Animal requirements of Section 504 and Title II regulations at 34 C.F.R. §104.4(b)(1)(i) and 28 C.F.R.

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§§ 35.104 and 35.136. Specifically, the District's current Procedures do not incorporate the Title II 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. Therefore, the language of the revised service animals Procedures and Request Form imply that individuals who use a service animal where it is readily apparent that the animal is trained to do work or perform tasks for that individual must also provide that information is in violation of 28 C.F.R. § 35.136 (f).

Background

The Student is a seven year old First Grade student with Type 1 diabetes: hypoglycemia and hyperglycemia unawareness. Since Kindergarten during the 2015-2016 school year, the Student has had a 504 plan related to his diabetes. In June 2016, the Student obtained a diabetic alert dog to alert him when his blood sugar goes out of range since he does not feel his highs or lows. The District added the Student's service dog to his 504 plan on August 19, 2016. The Student's 504 plan provisions related to the service dog provides the following modifications:

1. Student will be allowed to have a service dog at all times and at any location on the School campus.
2. The dog will need water and bathroom breaks throughout the day. Treats and water will be kept in the classroom.
3. The school nurse will train staff on service dog awareness.
4. The nurse will visit the Student's classroom to notify/educate classmates of the service dog.
5. The classroom teacher will send home a newsletter at the beginning of the year and to any new student thereafter, informing parents of the presence of the service dog in their classroom.
6. The service dog will remain on a leash, with the exception of PE.
7. If the Student's blood sugar is high, low, or unstable, the service dog will "paw", "nose", or bark as an alert.
8. In the event of the dog's absence, parent will notify the nurse and teacher.

On November 14, 2016, the Student was scheduled to participate on a field trip. Prior to the field trip, the Complainant obtained written approval on November 1, 2016 that authorized the Student, the Complainant and the service dog to ride the school bus for the November 14, 2016 field trip. Despite the written authorization, the Bus Driver would not allow the Student's service dog on the bus for the November 14, 2016 field trip. The Bus Driver called the District's Transportation Director who advised the Complainant and the Student's Guidance Counselor that the service dog was not allowed on the bus without the following: (1) a handwritten signed letter from the parent addressed and delivered to the Superintendent requesting transportation for the service dog, (2) an updated vaccination letter from the veterinarian, and (3) a letter from the company that certified the dog as a service animal. The Guidance Counselor advised the Transportation Director that she was not previously aware of these procedures but advised him that she could fax him items #2 and #3. The Transportation Director advised the Guidance Counselor that it would not be sufficient for her to fax the documents because the Complainant was required to provide these documents prior to the field trip. The Guidance Counselor advised the Transportation Director that she should have been notified of this procedure prior to the field

trip. Further, the Guidance Counselor reiterated that the Student's 504 plan states that the Complainant and service dog will accompany him on the field trip or the District must send a licensed nurse. In response, the Transportation Director threatened the Guidance Counselor with termination if she let the service dog on the bus. The Transportation Director further advised the Guidance Counselor that since the service dog could not ride and there were no proper medical personnel to accompany him, that the Student could not ride the bus either.

The Guidance Counselor advised the Transportation Director that the provisions for the Student to take his service dog were detailed in the Student's 504 plan and approved by the District's 504 Coordinator. The Transportation Director advised that he had no idea about Section 504 but opined that the 504 Coordinator might have made an error. The Transportation Director advised the Guidance Counselor that he would fax or e-mail her the procedure so that they could complete it for the next field trip. However, he reiterated his decision that neither the service dog nor the Student could ride the bus for the November 14, 2016 field trip. The Guidance Counselor advised the Transportation Director that the denial would not only upset the Complainant but upset and embarrass the Student because he made the Guidance Counselor tell the Student – in front of his classmates – why he would not be allowed to ride the bus with his friends and classmates. The Transportation Director replied that he did not know what else to tell her and reiterated that he would not allow the service dog or Student to ride the bus for the field trip. Following this telephone conversation, the Guidance Counselor removed the Student and the Guidance Counselor's daughter from the bus; she explained that the Student and her daughter were friends and she hoped that removing both of them from the bus would mitigate the Student's disappointment and embarrassment in response to the removal.

The conversation between the Guidance Counselor and the Transportation Director lasted for about 30 minutes; they spoke in front of two busses while the students overheard their conversation about the Student. When the Student got off the bus, his service dog alerted him. As a result, the Complainant checked the Student's blood sugar which was a low of 43.¹ The Complainant followed the bus in her car with the Student, the service dog, and the Guidance Counselor's daughter. The Student was upset and embarrassed because he did not get to ride the bus with his friends. The Student stated that he does not want to go on another field trip because he does not want to be embarrassed in the future.

The Complainant immediately notified the District Superintendent of the incident. The Superintendent conducted an informal investigation and determined that the District had improperly precluded the Student from bringing his service dog on the field trip. The Superintendent requested that the District's attorney prepare a revised service animal policy and conduct training. Additionally, the Superintendent requested that the District 504 Coordinator provide training for all bus drivers on the requirements of Section 504, Title II and the legal requirements regarding service animals for students with disabilities.

¹ The Student's 504 plan states that the Student's normal blood glucose range is 80-125.

Analysis & Conclusion:

OCR finds that the Student is a qualified individual with a disability within the meaning of 34 C.F.R. § 104.3(j) and 28 C.F.R. §35.104. During an interview with OCR, the Guidance Counselor acknowledged that the Student's 504 plan included his service dog as a modification and the Student had previously been permitted to bring his service dog to school without issue. Further, the Complainant and Student submitted all necessary documentation to participate fully in the field trip. There is no evidence that the District excluded the Student's service dog from the field trip for a permissible reason. Here, the Transportation Director had no reason to believe the animal was out of control, that the Student did not take effective action to control the service dog, or that the animal was not housebroken. Thus, there was no evidence to support the District's exclusion of the service animal as set forth at 28 C.F.R. §§ 35.136 (b) and (c). Based upon the foregoing, the evidence is sufficient to establish that the District's exclusion of the Student's service animal from the November 2016 field trip violated Section 504 and Title II at 34 C.F.R. §104.4(b)(1)(i) and 28 C.F.R. §§ 35.104 and 35.136.

On September 18, 2017, the District agreed to implement the enclosed Resolution Agreement (Agreement). Among other things, the Agreement requires the District to do the following: (1) modify its policies, practices, and procedures to permit the use of a service animal by an individual with a disability in order to conform to the requirements of Section 504 and Title II; (2) provide training on the Section 504 and Title II non-discrimination obligation to individuals with disabilities who use service animals and on the terms and conditions of the Service Animal Policy; and, (3) provide the Complainant with written notification that the Student is permitted to bring his service dog on District property, including, but not limited to, school buses and all District buildings where students and members of the public are allowed to go; and (4) offer counseling to the Student in order to remedy the effects of the disability discrimination that the Student endured during the 2016-2017 school year.

When fully implemented, the Agreement entered into by the District will resolve the issues of noncompliance. OCR will monitor the implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case.

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.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. Please be advised that the District 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.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR will monitor the District's implementation of the aforementioned Agreement to ensure that it is fully

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implemented. If the District 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact Adrienne Harris at (404) 974-9370.

Sincerely,

Melanie Velez
Regional Director