



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

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December 15, 2017

Dr. P. Barry Butler
President
Embry-Riddle Aeronautical University
600 South Clyde Morris Blvd.
Daytona Beach, FL 32114-3900

Re: Complaint # 04-17-2268

Dear Dr. Butler:

On May 2, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against Embry-Riddle Aeronautical University (University), alleging discrimination on the basis of disability.

Specifically, the Complainant alleged that the University discriminated against the Student, on the basis of his disability, by not permitting the Student's service dog to return to campus after the 2016 fall semester.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to Section 504.

Based on the investigation, OCR investigated whether the University discriminated against the Student, on the basis of his disability, by not permitting the Student's service dog to return to campus after the 2016 fall semester, in noncompliance with Section 504 and its implementing regulation at 34 CFR §§ 104.4, 104.43 and 104.44

Before OCR completed its investigation, the University offered, and OCR agreed, to resolve the allegations by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the resolution agreement entered into by the University.

Legal Standard:

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified individual 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, under 34 C.F.R. § 104.4(b)(1)(ii)-(iii) and (vii), a recipient, in providing any aid, benefit or service, may not afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit or service that is not equal to or as effective as that afforded others, or otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit or service. In the postsecondary context, the regulation implementing Section 504, at 34 C.F.R. § 104.43, states that no qualified individual 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 postsecondary education program or activity, including housing.

In addition to a general obligation not to exclude or limit the participation of qualified students with a disability, the Section 504 implementing regulation at 34 C.F.R. § 104.44(a) requires a postsecondary recipient to make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability. In addition, the Section 504 implementing regulation, at 34 C.F.R. § 104.44(b), provides that a recipient may not impose on students with a disability other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of students with a disability in the recipient's education program or activity.

In postsecondary settings generally, if a student with a disability believes that policies, practices or procedures would deny or limit his or her access to the institution's program, the student has the obligation after admission to identify himself or herself as having a disability and to request that the policy, practice or procedure be modified. In the case of service animals in particular, the student should inform the institution that he or she seeks a modification of any policy that would restrict the use of a service animal, and establish a nexus between the service animal and the disability that would afford the individual with a disability with access to the institution's facilities, programs, or activities. While the student and institution should work cooperatively to identify an appropriate modification, the postsecondary institution should defer to the student's choice to address his or her disability with the use of a service animal, unless the institution can provide equally effective alternatives.

In order for the use of the service animal to be protected by Section 504, there must be a sufficient nexus between the individual's disability and the function of the animal. This nexus refers to a relationship between the functional limitations of the individual with a disability and the work the animal does or the functions it performs for the individual with a disability that affords the individual with a disability with access to the institution's facilities, programs, or activities. If such a nexus does not exist, it would not be a violation of Section 504 to prohibit the animal in question.

In sum, if application of a postsecondary institution's policy, practice, or procedure prohibiting or restricting animals would discriminate against the qualified individual on the basis of disability, or deny or limit the access of a qualified individual with a disability to the institution's facilities, programs or activities, the institution must make reasonable modifications to the policy to allow use of the service animal, unless the modification requires a fundamental alteration or undue burden, or if the animal poses a direct threat to the health or safety of other individuals. Modifications to policies, practices, or procedures should be tied to and coextensive with a nexus between the animal's function and the individual's disability that affords the individual with a disability with access to the institution's facilities, programs or activities. Postsecondary institutions may place certain restrictions on the use of service animals, as long as those restrictions do not have the effect of denying or limiting such access. Such determinations should be made on a case-by-case basis, taking into account the unique circumstances that pertain to the particular individual with a disability and the particular service animal.

Summary of Investigation to Date:

The Student began attending the University during the 2016-17 school year. The Student has a documented disability, Autism. The Student's dog lived with the Student in University housing during the 2016 fall semester. On December 20, 2016, the University's Disability Support Services Director (Director) advised the Student that his dog was not approved to return for the 2017 spring semester, pursuant to violations of the *Animals on Campus* policy. On January 10, 2017, via email, the Student formally appealed the Director's decision, stating that the dog is a service animal required for the Student's disability.

OCR did not complete the investigation to determine whether the University discriminated against the Student, on the basis of his disability, by not permitting the Student's dog to return to campus after the 2016 fall semester, in noncompliance with Section 504.

Resolution Agreement:

To remedy the allegations raised by OCR's complaint, the University agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the University will notify the Student that to request permission to bring his dog to University housing and/or the classroom he may submit documentation to the University demonstrating the specific work or function the Student's dog has been trained to perform and a nexus between the Student's disability and the dog's function that afford the Student with access to the University's facilities, programs or activities. If the Student submits such documentation to the University, the University shall consider the documentation and notify the Student of any deficiencies in the documentation within ten (10) days of receipt of the documentation. If the University determines that the documentation sufficiently demonstrates that the dog is a service animal that has been individually trained to do work or perform a specific function or functions and that there is a nexus between the animal's function and the Student's documented disability that affords him access to the institution's facilities, programs, or activities, it shall grant the Student's request to permit his dog in University housing and/or the classroom, as requested, unless the University can establish that doing so would result in a fundamental alteration of the

University's program or an undue burden, or that the dog poses a direct threat to the health or safety of other individuals. If the University determines that the documentation does not demonstrate that the dog is a service animal that has been individually trained to do work or perform a specific function or functions or that there is not a nexus between the animal's function and the Student's documented disability that affords him access to the University's facilities, programs or activities, the University will appropriately document its determination and rationale.

The Agreement is aligned with the complaint allegations and the information obtained thus far and is consistent with applicable regulations under Section 504. OCR will monitor the University's implementation of the Agreement to ensure that it is fully implemented. If the University fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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 duly authorized OCR officials and made available to the public.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent possible, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, OCR reminds the University that intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces or because one has made a complaint or participated in any manner in an investigation in connection with a complaint.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this complaint, please contact Ms. Claudia Campo, the assigned attorney, at (404) 974-9378, or, me, at (404) 974-9376.

Sincerely,

/s/

Arthur Manigault
Compliance Team Leader

Enclosure