



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 30, 2019

VIA EMAIL & U.S. MAIL

Dr. Tony G. Waldrop
Office of the President
University of South Alabama
307 N. University Blvd. #130
Mobil, Alabama 36688

Re: OCR Complaint #04-18-2156

Dear Dr. Waldrop:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved its investigation of a complaint received by this office on February 7, 2018, alleging discrimination on the basis of disability by the University of South Alabama (University). Specifically, the Complainant alleged that the University asked her impermissible questions regarding her service animal and threatened to discipline her if she continued to bring her service animal on campus without obtaining certification for her service dog. The Complainant also alleged that the University's service animal policy was not compliant with the ADA regulations.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 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 from the Department; and, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public educational institutions.

OCR opened the following legal issue for investigation: whether the University discriminated against the Complainant on the basis of disability by refusing to permit her service animal to accompany her on campus and by making impermissible inquiries regarding her service animal, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(iii) and (b)(2) and 34 C.F.R. §§ 104.22(a) & 104.43(a) and the Title II implementing regulation at 28 C.F.R. §§ 35.104 and 35.136(a), (f), and (g).

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by fostering educational excellence and ensuring equal access.*

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Pursuant to OCR's *Case Processing Manual* (CPM), at Section 302, a complaint may be resolved when, before the conclusion of an investigation, the recipient expresses an interest in resolving the allegation(s) and issue(s) and OCR determines that it is appropriate to resolve them with a resolution agreement (Agreement) during the course of an investigation. After submitting information in response to OCR's data request letter, the University informed OCR of its desire to take voluntary actions necessary to resolve the allegation in the complaint, as well as concerns that arose during the investigation. Accordingly, OCR has not issued findings concerning this complaint. Set forth below is a summary of the evidence obtained thus far, prior to the signing of the Agreement.

Summary of the Evidence to date

The evidence received thus far shows that on June 4, 2017, the Complainant sent the University's Office of Disability Services (ODS) an email to advise them that she was currently registered with ODS due to her migraines and had recently acquired a service dog and wanted to include the service dog as a part of her disability-related request. In response, ODS staff sent her an *emotional support* animal form. The Complainant immediately responded and clarified that she had a *service animal*, not an *emotional support* animal. OCR reviewed notes from the ODS staff that reflect that on July 31, 2017, staff had a phone conference with the Complainant regarding her request for a service dog and referred her to the University's Service Animal Policy. On September 28, 2017, there was also notation that ODS staff attempted to follow-up with the Complainant regarding her request but did not reach her. Emails also show that ODS staff also asked the Complainant where the service animal needed to go, and the Complainant responded, "She goes everywhere else with me. Grocery store, dr. office, malls, friends, and families (sic) houses, public events, hotels, anywhere I go she goes". The ODS staff also asked the Complainant if she needed to take the service animal to the office; the Complainant responded, "yes". The evidence that OCR reviewed thus far in the investigation shows that Complainant was permitted to bring her service animal on campus.

The University also submitted a document entitled *Service and Assistance Animal Policy* (Policy), revised April 2015. The Policy defines *service animals* as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual or other mental disability. The Policy also states that "the work or tasks performed by a service animal must be directly related to the individual's disability". The Policy also states that the requestor must provide a letter with the prospective explanation of the task or function the animal has been trained to perform as a disability-related accommodation and also solicits impermissible information regarding certification for service animals.

The University's Policy makes impermissible inquiries of individuals with disabilities and potentially limits individuals with disabilities from being 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. In order to resolve this matter, the University agreed to modify its Service Animal Policy 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, 34 C.F.R. §§ 104.43 and 104.44 and 28 C.F.R. §§ 35.104 and 35.136.

Conclusion

As indicated above, prior to the completion of OCR's investigation, the University requested to voluntarily resolve this complaint, and OCR determined that resolution pursuant to OCR's CPM Section 302 was appropriate. The attached Agreement, which was signed by the University on September 26, 2019, will resolve the complaint when fully implemented. OCR will monitor the University's implementation of this 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 and Title II. 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, or discriminate against any individual because he or she has filed a complaint, or participated in the complaint resolution process. If this occurs, 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Cassandra Williams at (404) 974-9393 or by email at cassandra.williams@ed.gov or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright, Esq.
Supervisory General Attorney

Enclosure