



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

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

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March 29, 2019

Mr. Bill W. Hopkins, Jr.
Superintendent
Morgan County School District
235 Highway 67 South
Decatur, Alabama 35603

RE: OCR Complaint No. 04-19-1010
Resolution Letter

Dear Mr. Hopkins:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on October 1, 2018 against Morgan County School District (District). The Complainant alleged that the District's service animal policy is not in compliance with Section 504 of the Rehabilitation Act or Title II of the Americans with Disabilities Act.

As a recipient of Federal financial assistance from the Department, the District is subject to 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. As a public entity, the District is also 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 also prohibit discrimination on the basis of disability. Accordingly, OCR has jurisdiction over this complaint.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

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

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness
by fostering educational excellence and ensuring equal access.*

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 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 Background

The District provided a copy of its original Service Animal Policy (Policy 1), which applies to students and adults with disabilities to be accompanied by a service animal in a District school building, classroom, or at a school function. Policy 1 states that any request for an individual with a disability to be accompanied by a service animal must be submitted to the Superintendent in writing and must contain documentation of vaccinations at least ten (10) days prior to bringing the service animal to school or a school function. Policy 1 details the vaccinations required for service animals. Further, Policy 1 requires that the service animal must be in good health, clean and groomed, treated for fleas and ticks, and must be spayed or neutered.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on March 22, 2019 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Adrienne Harris, the OCR attorney assigned to this complaint, at 404-974-9370.

Sincerely,

Andrea de Vries
Compliance Team Leader

Enclosure