



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

July 16, 2020

[Via email: rankinr@mygcsd.org](mailto:rankinr@mygcsd.org)

Mr. Rob Rankin  
Superintendent of Schools  
Gilchrist County Schools  
310 NW 11<sup>th</sup> Avenue  
Trenton, Florida 32693

Re: OCR Complaint #04-20-1205

Dear Mr. Rankin:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved its investigation of a complaint received by this office on January 9, 2020 alleging discrimination on the basis of disability by Gilchrist County School District (District). Specifically, the Complainant alleged that the Vice Principal of Bell Elementary School (School) told her that per new District policy she was not allowed to bring her service animal (dog) to the School unless she completed an application and obtained prior approval from the school board. The Vice Principal told her to exit the School building and sit outside on a bench with her granddaughter. The Complainant also alleged that the District required her to submit the following information to support her application for a service animal: 1) health status and shot records for the dog; 2) certificate of training for specialized task; and 3) a signed statement from the Complainant that she read the District's service animal policy.

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 District 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).

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)

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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 District 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.

## **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 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 only 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.

### **Summary of the Evidence to Date**

The Complainant has a service dog that assists her with mobility and balance. Although the District was not permitted to make the foregoing inquiries regarding the service animal, the Complainant provided the District with the following documentation: a copy of a training certificate, vaccination records for the dog, an official service dog registry, and a copy of the Complainant's driver's license form.<sup>1</sup>

The District's Service Animal Policy (Policy) defines service animal as any dog that is trained to do work or perform task for the benefit of an individual with a disability, which are related to the person's disability. The Policy also excludes other species of animals and animals whose sole function is to provide comfort, therapy, or companionship, or considered a pet, except for miniature horses with certain limitations. Attached to the Policy is a document titled, "Procedures for Responding to Requests for a Student with a Disability to Bring a Service Animal to School" (Procedure).

The Procedures require that a student, parent or adult complete and submit a written request to bring the service animal to school using the District's request form. The request must identify and describe the service animal and the work or task the service animal is trained to perform because of the student's disability. The requestor is also required to provide documentation that the service animal is properly immunized as required under Florida Law and registered and licensed in accordance with all state and local animal licensing and registration requirements. The Procedures also require that this process be completed before an adult or student can bring the service animal on campus. Requestors are also informed that the District may require proof of immunization and all animal licensing and registration requirements under applicable state and local law. If a requestor refuses to provide this information, the District can refuse to allow the student to bring the service animal to school.<sup>2</sup>

With respect to an Individual Education Plan (IEP), the Procedures state that once the District receives a request for a service animal for a student, an IEP Team or Section 504 Team (Team) will meet and conduct

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<sup>1</sup> Pursuant to 28 C.F.R. § 35.136(f) *Inquiries*. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and 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.

<sup>2</sup> Id at 28 C.F.R. § 35.136(f).

a “case specific inquiry” as to whether the animal meets the definition of service animal per the District’s policy. If the Team concludes that the animal meets the definition, the Team will create a plan which identifies a process for introducing the service animal to the school environment as well as identify any appropriate training for staff and students regarding interaction with the service animal and other activities. If the District determines that the student will not be allowed to bring his/her service animal to the school, the parent is advised that they may be entitled to file a due process grievance pursuant to IDEA or Section 504 as a “denial of FAPE”. While the Procedures identify a grievance process for students who are not permitted to bring a service animal to school, the Procedures do not identify a grievance process for members of the general public who are not permitted to bring a service animal on school grounds

Finally, the District’s Procedures identify certain circumstances where the District can exclude or remove a service animal: 1) if the animal is out of control; 2) the animal is not housebroken; 4) the animal poses a threat and safety of others that cannot be eliminated by making reasonable modifications, 4) the animals presence would constitute a fundamental alternation in the School District’s program.

### **Conclusion**

As indicated above, prior to the completion of OCR’s investigation, the District requested to voluntarily resolve this complaint, and OCR determined that resolution pursuant to OCR’s CPM Section 302 was appropriate. The provisions of the Agreement, executed by the District on July 16, 2020, 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 Section 504 and Title II at issue in the case. 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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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](mailto:cassandra.williams@ed.gov) or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright, Esq.  
Supervisory General Attorney

Enclosure