



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

230 SOUTH DEARBORN ST., 37<sup>TH</sup> FLOOR  
CHICAGO, IL 60604

REGION V  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

September 9, 2019

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Re: OCR Docket #05-18-1466

Dear XXXXXXXXXXXXXXX:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Cedar Falls Community School District (District) on July 27, 2018, alleging discrimination on the basis of disability. Specifically, the complaint alleges that, during the 2017-2018 school year, the District discriminated against Student A, a student at Peet Junior High School (School), on the basis of disability (Cognitive Disorder, Attention Deficit Hyperactivity Disorder, Mixed Receptive-Expressive Language Disorder, Phonological Processing Disorder, and Developmental Delay) by not permitting Student A’s service animal to attend school with her.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II or ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

Prior to the conclusion of OCR’s investigation, the District expressed interest in resolving the complaint. Discussions between OCR and the District resulted in the District’s signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the allegation and issued raised in the complaint.

**Applicable Regulations**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis on disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulation, at 28 C.F.R. § 35.130(a), similarly provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination by a public entity. The Title II regulation, at 28 C.F.R. § 35.130(b)(7), also requires a public entity to

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

make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity.

The Title II regulation, at 28 C.F.R. §35.136(a), states that, “[g]enerally, 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(g), further provides that persons with disabilities have the right to be accompanied by service animals in all areas of a public entity’s facilities where members of the public, participants in services, programs and activities, or invitees, are allowed.

The Title II regulation, at 28 C.F.R. § 35.104, 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.” Further, the “provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”

Under the Title II regulation, at 28 C.F.R. §35.136(f), a public entity is not permitted to ask about the nature or extent of a person’s disability or require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. If it is not readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, the public entity is permitted to make two inquiries to determine whether an animal qualifies as a service animal: (1) if the animal is required because of a disability; and (2) what work or task the animal has been trained to perform.

### **The District’s Service Animal Policy**

Board Policy 1007.1, Service Animals Permitted, states that the District “shall allow the use of service animals to accompany individuals with disabilities in all areas of District property where the individual is normally allowed to go[,]” including, but not limited to, classrooms, cafeterias, and school buses. The policy defines a service animal as “dogs and in some instances miniature horses trained to do work or perform tasks for individuals with disabilities.” The policy provides that, when no prior notice is given to the District of the use of a service animal, the Superintendent or designee are permitted to ask only the following questions: “Do you need/require this animal because of a disability?” and “What work or task has the animal been trained to perform?”

Board Policy 1007.1 states that the service animal must be under control at all times while on District property, either by the individual with a disability or by a handler of the service animal. The term “under control” is defined in the policy as “harnessed, leashed, tethered, unless these devices interfere with the animal’s work or are impractical due the individual’s disability, in

which case control may be established by using voice, signal or other effective means to maintain control.” The policy states that a service animal may be excluded from District property if “the presence of the service animal poses a direct threat to health and safety of others; the owner or handler is unable to control the animal; the animal is not house broken; the animal is ill; the animal is not clean or has a foul odor; the presence of the animal significantly disrupts or interferes with the educational process; or the presence of the animal would require a fundamental alternation to the program.” Denial of access of a service animal may be appealed to the District’s Section 504 Coordinator.<sup>1</sup>

**Facts**

*Background*

Student A, who was in the ninth grade during the 2018-2019 school year, receives special education and related services pursuant to an individualized education program (IEP) for multiple disabilities.

In December 2016, Student A acquired a service dog that was individually trained by 4Paws for Ability, Inc. (4Paws) in Xenia, Ohio. Student A’s parent, sister, and a family friend serve as handlers for Student A’s dog. According to Student A’s parent (Parent A), Student A’s dog can accept tethering and is trained to respond to the following commands issued by a handler:

<i>Command</i>	<i>Response/Task Performed</i>	<i>Purpose</i>
Touch	Touches Student A with front paw	Sensory, Behavior Disruption, Comfort
Kiss	Licks Student A, giving her kisses	Sensory, Behavior Disruption, Comfort
Lap	Places head on Student A, usually her legs	Sensory, Behavior Disruption, Comfort
Nuzzle	Nuzzles Student A with muzzle	Behavior Disruption
Over and Down	Steps over Student A and lays down across her to apply pressure	Sensory, Behavior Disruption, Comfort
Jump and Down	Jumps up to join Student A on a piece of furniture and lays down on her	Sensory, Behavior Disruption, Comfort
Heel	Heels to the handler and keeps Student A with adult when tethered	Limit Student A’s freedom of movement when walking so she is near an adult in public

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<sup>1</sup> The School Board Policies are located on the District’s website at <http://www.cfschools.org/school-board/policies>.

<i>Command</i>	<i>Response/Task Performed</i>	<i>Purpose</i>
Down	Lies down when tethered to Student A and will not move until commanded to do so	Prevent Student A from wandering away/eloping <sup>2</sup>
Where’s your girl?	Search for Student A by scent when Student A has wandered off/eloped	Search and rescue

Parent A also reported that Student A’s dog has learned some of the behaviors that signal Student A’s heightened anxiety and can respond without command from the handler, and that the dog will get closer to Student A on bad days if he senses she is upset.

Regarding elopement, Parent A reported that, on one recent occasion, Student A wandered away outside of the dog’s view at the end of bowling, and Student A’s dog was able to locate her behind the building when commanded, “Where’s your girl?”<sup>3</sup>

OCR spoke with a representative of 4Paws who confirmed that Student A’s dog had received individualized training to address Student A’s autism-like tendencies.<sup>4</sup> The representative explained that autism-trained service animals are trained to interrupt behaviors (*i.e.*, touch, nudge, provide deep pressure, snuggle, or kisses to the child if the animal notices a meltdown or anxiety), and for tethering and tracking in case a child elopes. She explained that it is not uncommon for a service dog to sleep in school (as they need twice as much sleep as humans), but clarified that merely being available for petting or hugging by the child is not considered work unless it is the result of the dog responding to a command or initiating contact (nuzzle, kisses, pawing, etc.) for the purpose of behavior disruption. As for training, she said that dogs are initially trained to perform tasks (nuzzle, kisses, *etc.*) on the handler’s command but, after a while, if the owner maintains the training properly, the dog can learn to respond on its own. Conversely, if training is not maintained, then the dog can begin to act more like a dog and less like a service animal. She explained that, if a dog is not responding or doing the work, then it may be the handler that is not correctly performing the job of a handler or more training of the dog is needed.

### *IEP Meetings and Prior OCR Complaint*

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<sup>2</sup> The District informed OCR that Student A does not have a history of eloping at school.

<sup>3</sup> OCR interviewed both coaches who were at the bowling alley that day, one of whom is a friend of Student A’s family, and neither coach witnessed this incident; they told OCR that they were not aware that Student A is a flight risk as she had not eloped before and the Complainant did not discuss elopement with them. Both coaches reported that Student A’s dog usually laid on the floor near the handler and Student A sometimes went over to pet him. Neither recalled seeing Student A’s dog perform a task after being issued a command.

<sup>4</sup> Parent A describes Student A as having autism-like tendencies, but she has not received that diagnosis.

On January 9, 2017, Student A's IEP team convened to consider her parents' request that Student A's service dog attend school with her during the school day. According to the IEP team meeting notes, Student A's parents reported that Student A's dog was trained, when cued by an adult handler, to support Student A when she becomes upset and anxious, and is also trained in "search and rescue" if Student A impulsively leaves the area. After reviewing information about Student A's dog and her current program and progress, the IEP team determined that a service dog was not necessary for Student A to receive a free appropriate public education (FAPE). The team concluded: "While the school team continues to have questions regarding [Student A's dog's] status as a service dog versus an emotional support/therapy dog, the team is willing to permit the dog in the building on a trial basis and allow the family to provide the necessary assistant/handler."

On January 11, 2017, Student A's parents emailed the Coordinator of Student Services (Coordinator) to reject the proposed "trial period" on the basis that Student A's dog is a service animal trained in behavior intervention, namely "task trained to nuzzle, give kisses, or provide deep pressure as commanded, ... to act as an anchor when going from place to place providing safety for [Student A], and task trained to 'search' for [Student A] if she were missing." On January 17, 2017, the District's counsel wrote a letter to Student A's parents reiterated the District's position that it did not deny access to Student A's dog. Counsel explained that "[the District] will not provide a handler and that it will review the role of the dog after 20 school days to determine if [it] meets the legal definition of a service dog not based on training alone but on the role that the dog plays in [Student A's] school activities."

On June 6, 2017, Student A's IEP team convened to reconsider Student A's parent's request for the District to provide a handler for Student A's dog. The team again concluded that use of a service dog is not necessary for the delivery of FAPE to Student A, and therefore, the District would not provide a handler. The team also considered Student A's parents' request for access under Title II of the ADA and agreed to allow Student A's dog to accompany her to school during a trial period if Student A could serve as the handler or if her parents would provide a handler for the dog.

On June 12, 2017, Student A's parents filed a complaint with OCR (# 05-17-1355), alleging disability discrimination. On December 17, 2017, OCR determined that the evidence was insufficient to establish that the District violated Title II of the ADA by requiring Student A's parents to provide a handler. OCR's determination assumed, but did not conclude, that Student A's dog is a service animal within the meaning of Title II.

*Trial Period*

On March 21, 2018, Student A's dog accompanied her to school with her parent serving as the dog's handler for a 20-day trial period, which ended on or about April 30, 2018.<sup>5</sup> Each party maintained a log documenting their observations of Student A's dog throughout the trial period, and both parties provided OCR with explanations of their observations during the trial period. OCR's review of the logs indicates that the parties differed significantly in terms of their interpretation of the dog's behavior during the trial period.

The District's log, which includes notes of observations by Student A's teachers and several paraprofessionals, suggests that Student A's dog did not recognize and respond to Student A's behaviors on its own or in response to the handler cues. The log recorded only a few instances of the dog disrupting Student A's behavior (*i.e.*, a crying spells), and noted many instances wherein Student A became upset (crying, using foul language, pressured speech, or visually anxious or frustrated), but her dog did not respond to her behavior (and was sometimes sleeping), and was also not often cued by the handler to respond. In one instance, when the handler attempted to cue the dog to respond to Student A's behavior, the dog did not respond to the cue, and so the handler directed Student A to the dog instead. The District's log further indicates that, on many occasions, Student A initiated contact with the dog by petting it or getting down on the floor with the dog. When Student A got on the floor with the dog, the dog sometimes responded to her by licking, by placing his head in her lap, or by lying across her.<sup>6</sup> The log notes that the dog was sleeping on many occasions.

Student A's teacher and the Coordinator told OCR that they did not feel that Student A's dog reduced Student A's overall anxiety while in the classroom, and they noted that Student A's behavior seemed to worsen during the trial period. The Coordinator explained that, prior to the trial, Student A had about one incident of shutting down or getting upset (*i.e.*, crying or outbursts) every three days, but these incidents increased during the trial. Student A's parent disagreed and attributed Student A's increased disruptive behavior to her absences due to illness.

Parent A's log documents more interaction between Student A and her dog, with the majority of the contacts initiated by Student A. The log noted many instances wherein Student A reached down and petted her dog for "comfort" or "sensory needs," and several occasions wherein Student A got up and went over to her dog or got down on the floor with him. The log indicates that, on some occasions wherein Student A went over to her dog, it responded by giving kisses, pawing Student A's chest, pushing her down, or responding to the handler's command "over and down." The log did not document any instance wherein Student A's dog failed to respond to a handler's cue; however, there were few if any entries documenting that a cue had been issued, and only one clear entry documenting that the dog responded to the handler's verbal cue.

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<sup>5</sup> The trial period was extended several days due to Student A's absences for an ear infection.

<sup>6</sup> The representative from 4Paws indicated that they train service animals to respond to the handler's cues, but do not train handlers to cue the child to go to the service animal.

Parent A's log also included entries indicating that the dog initiated contact or engaged with Student A without command, but those entries do not include a description of Student A's antecedent behavior or the reason for the dog's contact (*e.g.*, pulling at hair, crying, foul language, etc...). The log notes that Student A's dog would move close to her to provide "comfort" or "reassurance" and to let adults know that Student A is "struggling mentally, emotionally or has sensory needs" or that a meltdown is near; however, when it occurred, the dog did not always respond (cued or not) to stop the meltdown. Lastly, the log stated that Student A's dog would "scent her" and "track" her when she changed locations and was tethered to Student A in hallways and on public outings to prevent her from eloping.

### *Post-Trial Period*

On May 1, 2018, the day after the trial period concluded and Student A's dog was not in the school, Student A eloped from school when she asked to use the restroom. The District reported that it had no prior concerns about Student A eloping, noting that Student A routinely leaves the classroom to use the restroom or go take her medications without incident and had not previously eloped. District staff also reported that Student A's parents regularly drop her off for extracurricular activities at the school without her dog.

On May 3, 2018, the parties convened a meeting to discuss the results of the trial period. The District asserted that Student A's dog did not behave as a service animal because, based on several staff members' direct observations, the dog did not independently recognize and respond to Student A's concerning behaviors, and did not seem to understand or respond to commands given by the handler. As such, the District has misgivings whether Student A's dog is in fact a service animal. Additionally, the District stated that its data collected during the trial period indicated that the presence of the dog and/or the handler had a negative impact on Student A's behavior.

Student A's dog has not been in school with Student A since April 30, 2018. Student A has been chronically absent since the May 2018 meeting. She attended school only twice after the trial period ended and through the end of the 2017-2018 school year.<sup>7</sup> During the 2018-2019 school year, Student A's absenteeism did not improve, as she was absent for at least one period of the day on seventy school days during the first semester.<sup>8</sup> School officials report that Student A does well in school on days she attends (*i.e.*, is engaged in the classroom and has positive

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<sup>7</sup> Student A's attendance records indicate that she has had a history of attendance issues. Student A was absent for at least one period of the day on 39 out of 130 school days during the 2017-2018 school year before the trial period, and was absent for at least one period of the school day on 11 school days during the 28-day trial period.

<sup>8</sup> The District reported that Student A was absent most frequently in the morning and would sometimes come to school in the afternoon. Out of approximately 90 school days in the first semester, the District estimated Student A's attendance by period to be as follows: first period – 67 absences; second period – 70 absences; third period – 69 absences; fourth period – 63 absences; fifth period – 44 absences; sixth period – 42 absences; and seventh period – 42 absences.

relationships with peers) and that Student A has told staff that she likes attending school. Student A's parent said that she believes that Student A realizes that she is having "big feelings" (*i.e.*, anxiety), which she does not know how to process, and cannot cope when her dog is not at school.

The District provided OCR documentation demonstrating that, during the 2017-2018 school year, another student used a service animal in school to decrease physical outbursts and elopement from school. The dog was trained to independently act as an anchor if the student attempted to run and could locate the student, if the dog was not tethered to the student. The dog was also trained to recognize the need to nudge the student to redirect off-task behavior. In addition, during the 2019-2020 school year, a visually impaired student will begin to use a service animal as a guide dog in school. Finally, the District reported that three staff members who assist a local agency in training service animals are permitted to bring service dogs in training with them to school for training.

### **Analysis and Conclusion**

The District requested to resolve the allegation pursuant to Section 302 of the CPM prior to the conclusion of OCR's investigation. The District also voluntarily agreed to provide a handler for Student A's dog to resolve the complaint allegations. The terms of the enclosed Agreement are aligned with the allegation and issues investigated to date and are consistent with the requirement of Title II.

The Agreement requires the District to take the following actions:

- Notify the Complainants that Student A will have access to all District facilities, programs, and services, with her dog and a handler, consistent with the District's Service Animal Policy, Board Policy 1007.1, and the provisions of Section 504 at 34 C.F.R. §§ 104.4 and Title II at 28 C.F.R. §§ 35.104, 35.130, and 35.136.
- Offer the Complainants the opportunity to meet with the high school principal or other appropriate District staff member to discuss any questions they may have about how the District will provide access to Student A and her dog.
- Provide training to all District administrators 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 District's Service Animal Policy, Board Policy 1007.1.
- In the event of a dispute during the 2019-2020 school year regarding the efficacy of the District's handler or performance of Student A's dog as a service animal, the District will follow a specific dispute resolution process set forth in the Agreement.

When fully implemented, the resolution agreement will address all of the allegations investigated and OCR will monitor the implementation of the agreement.

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

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.

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 individual 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. 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.

If you have any questions, please contact Roberto Flores, Equal Opportunity Specialist, at 312-730-1688 or by email at [Roberto.Flores@ed.gov](mailto:Roberto.Flores@ed.gov).

Sincerely,

Marcela Sanchez-Aguilar  
Supervisory Attorney

Enclosure