



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION VI  
LOUISIANA  
MISSISSIPPI TEXAS

Renaissance Tower  
1201 Elm Street, Suite 1000  
Dallas, TX 75270

October 17, 2023

Ref: 06232055

Dr. Taylor Eighmy, President  
University of Texas at San Antonio  
One UTSA Circle  
San Antonio, TX 78249

*Via email (president@utsa.edu)*

Dear Dr. Eighmy:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, received in our office on December 5, 2022, filed against the University of Texas at San Antonio (the University), in San Antonio, Texas. The Complainant alleged that the University discriminated against an alleged injured party (the AIP) on the basis of disability ([redacted content]) and retaliated against the AIP. Specifically, the Complainant alleged:

1. The University denied the AIP access to the “Life After Foster Care” event (the Event) on June 8, 2022, due to having a service dog; and
2. The University retaliated against the AIP by denying the AIP access to the Event on June 8, 2022, because the AIP previously filed an OCR complaint against Palo Alto Community College (the College), about which University staff had knowledge.

OCR enforces 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, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. The University is a recipient and a public entity; therefore, OCR has jurisdiction to process this complaint under Section 504 and Title II.

During the investigation, OCR interviewed the Complainant, the AIP, and University staff, including the Project Director of Bexar County Fostering Education Success (the Project Director). OCR also reviewed information provided by the Complainant, which included a University Equal Opportunity Services Final Report (the Report). Based on OCR’s review and

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

analysis of the information and prior to the conclusion of OCR’s investigation, OCR found compliance concerns. On March 1, 2023, the University informed OCR it was interested in resolving the complaint allegations. The basis for this determination is outlined below.

**Allegation 1:** The Complainant alleged the University discriminated against the AIP based on her disability when it denied the AIP access to the “Life After Foster Care” event (the Event) on June 8, 2022, due to having a service dog. Accordingly, OCR investigated to determine whether the University discriminated against the AIP based on disability by infringing on the AIP’s ability to use her service animal, in violation of Section 504 and Title II, and their implementing regulations, at 34 C.F.R. § 104.4(a) and 28 C.F.R. § 35.136(a), respectively.

### Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that 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. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a). The Title II regulation also requires Universities to 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. § 35.104, 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 regulation, at 28 C.F.R. § 35.136(a), provides that a public University generally must modify its policies, practices, or procedures to permit individuals with disabilities to use service animals. 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.

Under the Title II regulation, at 28 C.F.R. § 35.136(g), persons with disabilities have the right to be accompanied by service animals in all parts of facilities where the public, participants in programs and activities, or invitees are allowed. The regulation at 28 C.F.R. § 35.136 (f) provides that a public University 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 (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 public University

is permitted to make two inquires 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 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 only 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. In addition, 28 C.F.R. § 35.130(b)(7) provides that if admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. According to 28 C.F.R. § 35.136 (c), if a service animal is excluded pursuant to 28 C.F.R. § 35.136(b), the public entity is required to give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

### Findings of Fact

On June 8, 2022, the AIP was a student at the College and not a student at the University when she attempted to attend the Event which was held at the University, and for which she provided an RSVP. The Complainant reported to OCR that the AIP has a disability and uses a service animal that is trained to [redacted content]. The Complainant asserted that when the AIP arrived at the Event location at the University, she was met by a campus police officer, who denied her entry. The Project Director was also brought over who confirmed the denial of entry. The Complainant indicated the Project Director stated that the dog caused disruptions at other events off the University campus based on reports from third parties without witnessing any negative behaviors from the Student’s service dog. The AIP stated that when the Project Director met her and the campus police officer at the Event, the Project Director stated that employees at the College stated her dog poops in the hallway, lunges at people, and barks. The Complainant indicated to the AIP that the denial of entry to the Event was due to these third-party reports (without any University staff witnessing negative behaviors from the AIP’s service dog).

OCR’s review of the Report, which is dated December 16, 2022, reveals that the AIP filed a complaint with the University regarding her denial of entry to the June 8<sup>th</sup> Event. The Report indicates that on June 1, 2022, the Project Director sent an email to other University staff regarding the AIP’s RSVP, noting concerns the AIP could “hijack the learning opportunity for other attendees” and noted the presence of several county judges who would be presenting. The Project Director also made reference to a Texas Tribune session with the city’s Mayor. The Report includes another email excerpt dated June 1, 2022, in which the Project Director referred to the AIP’s service animal as “an unregistered pit bull that barks at people.” The Project Director noted that the AIP had approached her at a past event, threatened to sue the Bexar County Fostering Education Success program (BCFES) and the Path program, and that College staff had been instructed by a “District office” to not engage the AIP. Another email within the Report dated June 6, 2022, demonstrates that University staff requested campus police presence due to a “history of disruptive behavior” and an “incident” at a recent Texas Tribune public session with the Mayor. The email also refers to “her dog’s recent behaviors.” The December 16<sup>th</sup> Report does show that the Project Director confirmed the AIP’s RSVP for the Event.

The Report includes information the University obtained from interviews with the Project Director and the campus police officer (the Officer) who was present at the event. The Project Director indicated that she had received reports of the AIP's dog defecating in the hallway at the College, and that BCFES employees from partnering institutions reported the AIP's dog barked at people at the Texas Tribune event. The Project Director stated that on the day of the Event, she spoke with the Officer and informed him of reports of the AIP's past incidents and service dog. The Project Director stated that she informed the Officer that campus police presence was requested to avoid disruptions during the event. The Project Director stated that she observed the Officer review a card provided by the AIP regarding her service animal and it was the Officer who stated to the AIP that she was not going to be allowed entry to the Event. The Project Director also mentioned in her interview for the University's investigation that she mentioned incidents with the AIP's service dog that were reported to her by staff at the College. The Project Director stated that when the Officer approached her at the Event, the Officer was already framing that the AIP would not be allowed to enter the Event. The Project Director indicated she did not want to challenge the Officer's decision as the officer was assigned to monitor the event. The Project Director also described the AIP's service dog as a "very big pit-bull" that can be "intimidating" and "not traditionally a service dog."

The Report's account of the Officer's interview indicates the Officer stated that he reported to the Event two hours prior to when it began and met with the Project Director who had requested campus police presence. The Officer stated that the Project Director informed him the AIP would not be allowed to attend the event if she arrived. The Officer stated that the AIP asked to speak with the Project Director after he denied entry to the event. The Officer indicated that he asked the AIP two questions allowed under the ADA if the dog is a service dog because of a disability and what task or service the dog is trained to perform. He indicated that the AIP responded by providing him with the dog's registration card.

The Report states that the Officer indicated the AIP's serviced dog was not allowed to enter the event, and that was the first time he had seen a pit bull as a "service dog" and not utilized as an "emotional support dog." However, the Officer also states that the AIP's service dog was observed as being "obedient" when he was speaking to the AIP when she attempted to attend the Event.

Furthermore, the Report references a video on YouTube taken by the AIP that includes part of her verbal exchange with the Project Director and the Officer when she was denied entry to the event. OCR's review of the video reveals the Project Director referring to the AIP's dog as having "pooped in the hallway" and "been aggressive at the Mayor's event." The video shows the Officer stating that his supervisor told him "they have the right to say who they do and do not want in there." The video also shows the Project Director provides the AIP with cash reimbursement for parking and offers to collect Event resources for the AIP. Prior to leaving, the AIP states she would then see the Project Director in court.

The University's investigation concluded that the denial of entry was the result of a miscommunication without either University policy 9.01 Nondiscrimination or 9.02 Persons with Disabilities being violated by the Project Director. OCR reviewed Policy 9.01 entitled Nondiscrimination, and Policy 9.02 entitled Persons with Disabilities. Policy 9.01

Nondiscrimination defines discrimination as “conduct directed at a specific individual or group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education on the basis of race, color gender, sex, religion, national origin, age, disability, citizenship, gender identity, gender expression, and veteran status in all aspects of employment and education.” Policy 9.02 defines persons with a disability as “one who has a physical or mental impairment that substantially limits one or more major life activities.” Policy 9.02 also defines service animals as “any breed of dogs (and miniature horses) which are individually trained to do work or perform tasks for the benefit of an individual with a disability.” Even though the Report concluded that no policy was violated, the Report recommended review of the situation by “People Excellence” with the Project Director to respond appropriately to similar situations in the future.

The University did not deny the contents of the Report which OCR had obtained from the Complainant.

### Legal Analysis

OCR’s preliminary review of the evidence indicates the AIP was an individual with a disability who has a service animal. When attempting to gain entrance to the Event on June 8, 2022, the AIP was asked to remove herself and her service animal from the premises. However, the evidence indicates the request was based on third party reports of the AIP’s dog defecating in the hallway at the College and being aggressive at an activity unrelated to the University Concerns also appeared to be raised regarding the size and type of breed of the AIP’s service animal. None of the information used to deny the AIP and her service dog entry to the event were based on observations by University staff at the Event. In fact, the Report indicates the Officer only observed the service animal being “obedient.” The video reviewed by OCR shows the AIP’s service animal under control. The above information reflects a compliance concern with the University’s request the AIP remove her service animal from the premises was contrary to the requirements at 28 C.F.R. § 35.136 (b).

Furthermore, OCR’s preliminary review of the evidence indicates the Project Director only offered to collect information from the Event to provide to the AIP. Neither the Project Director nor the Officer offered to allow the AIP the opportunity to participate in the program without having the service animal on the premises. This evidence reflects a compliance concern regarding the requirements of 28 C.F.R. § 35.136 (c) when a service animal is excluded.

Prior to the conclusion of OCR’s investigation, the University requested a voluntary resolution agreement.

**Allegation 2:** The University retaliated against the AIP by denying the AIP access to the Event on June 8, 2022, because the AIP previously filed an OCR complaint against Palo Alto Community College (the College), about which University staff had knowledge. Accordingly, OCR sought to determine whether the University retaliated against the AIP by denying access to the Event on June 8, 2022, because the AIP previously filed an OCR complaint against the College about which University staff had knowledge, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

### Findings of Fact

As previously established in Allegation 1, on June 8, 2022, the AIP and her service animal were prevented from attending an event hosted by the University. The AIP stated to OCR that she believes her removal was in retaliation because she previously filed an OCR complaint against the College, docket number 06222270, on July 21, 2022. The AIP indicated that while her prior complaint was with respect to the College, the Project Director communicates regularly with College staff through the BCFES program. The AIP also alleges she had met with the Project Director about the issue she was having regarding admissions to the veterinary technician program at the College as a part-time student with a disability.

OCR interviewed the Project Director. The Project Director stated that she manages program collaboration with the University and external partners, which includes other local colleges and foster courts. The Project Director stated that she receives regular reports from staff providing direct services from all network members, which includes the College. The Project Director indicated knowledge of the AIP and her service animal, but indicated she was unaware of her prior OCR complaint. The Project Director did state that she was aware of reports about the AIP's dog defecating in a hallway and exhibiting aggressive behavior at the College.

OCR interviewed the Complainant and AIP on April 25, 2023, to respond to the information above. The AIP stated that her prior OCR complaint alleged that she was unable to apply for a veterinary program that she had been taking pre-requisites for because she was a part-time student with a disability. The AIP admitted that the Project Director did not know about her previous OCR complaint filed on July 21, 2022. The AIP also maintained that the Project Director was aware of her advocacy for admission to the veterinary technician program as a part-time student with a disability with accommodations, because she met with the Project Director in May 2022, and her service dog was present at the meeting. The AIP indicated that during that meeting, the Project Director indicated the veterinary technician program was concerned about the effect on its licensing numbers, due to the length of time it would take for her to complete the coursework as a part-time student. The AIP stated that the Project Director asked her if she could complete the program without taking the licensing exam. The AIP also indicated she informed the Project Director that she would be resourcing other options to advocate for becoming a veterinary technician as a part-time student with a disability, even though filing an OCR complaint was not specifically mentioned as one of those options.

The Project Director confirmed that she did meet with the AIP in March or April prior to the July event to discuss the veterinary tech program. However, the Project Director denied being able to offer any solutions such as participating in the program without taking the licensing exam because as an employee of the University, she had no role in admissions decisions to programs at the College. Instead, the Project Director indicated she recommended the AIP prepare for alternatives and scheduled a subsequent meeting that the AIP later cancelled. The Project Director also denied the AIP communicated dissatisfaction with the meeting and expressed she would look for other alternatives to advocate for admission to the veterinary tech program. With respect to the June 8, 2022 event, the Project Director stated that the conversation had no effect on the AIP's admission. The Project Director indicated the AIP has attended several other events

and the denial of admission was not of her direction as she did not know the AIP was denied access until she was called into the hallway by the University police officer. The Project Director stated the presence of University police was in case the AIP escalated.

### Legal Standard

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI at 34 C.F.R. § 100.7(e), no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights or privileges under Section 504, or because an individual files a complaint, testifies, assists, or participates in any manner in an investigation, a proceeding or hearing under Section 504. The Title II regulation at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

In order for an allegation of retaliation to be sustained, OCR must first determine whether:

- (1) an individual engaged in a protected activity;
- (2) an individual experienced an adverse action; and
- (3) there is some evidence of a causal connection between the protected activity and the adverse action.

If a *prima facie* case of retaliation has been established, OCR then determines whether the recipient can provide a facially legitimate, non-retaliatory reason for the adverse action and, if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

### Analysis

OCR found a significant conflict in the evidence with respect to a *prima facie* case for retaliation. The AIP engaged in a protected activity when she met with the Project Director to raise concerns about possible civil rights problems with respect to the veterinary program at the College. The AIP experienced an adverse action when she was denied entry to an event at the University on June 8, 2022. However, OCR is unable to establish a causal connection between the protected activity and the adverse action. While the two events are in close proximity, OCR's review of emails from the University's investigation demonstrate the plan the Project Director communicated internally was to allow the AIP to attend. The Project Director acknowledged the AIP's RSVP to the event. The campus police officer who denied the AIP admission to the event was not part of the meeting between the AIP and the Project Director and had no knowledge the AIP expressed civil rights concerns about admission to the veterinary tech program at the College for students with disabilities. Therefore, a preponderance of the evidence does not establish that the AIP was retaliated against as alleged.

### Conclusion

Prior to the conclusion of OCR's investigation, the University informed OCR that it was interested in resolving the complaint. Section 302 of OCR's Case Processing Manual provides

that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the University's request to resolve the complaint.

The University voluntarily signed the enclosed resolution agreement (Agreement) on October 16, 2023. OCR determined the Agreement addresses and, when fully implemented, resolves the issues under investigation. Thus, OCR is closing the investigation of this complaint as of the date of this letter. However, OCR will monitor implementation of the Agreement. If the University fails to implement the Agreement, OCR will resume investigative activities.

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 recipient may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. 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. In the event that OCR receives such a request, it 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 about this letter, please contact Brian Aurelio, the attorney assigned to investigate this complaint, at (202) 987-1540, or by e-mail at [Brian.Aurelio@ed.gov](mailto:Brian.Aurelio@ed.gov).

Sincerely,

Adriane P. Martin  
Supervisory Attorney/Team Leader  
Office for Civil Rights  
Dallas Office

Cc: Venu Nair, General Counsel, via email ([Venu.Nair@utsa.edu](mailto:Venu.Nair@utsa.edu))