



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

February 14, 2018

*Sent via electronic mail to: XXXXX@XXXXX*

XXXXX X. XXXXX, Esq.  
XXXXX, XXXXX XXXXX  
XXX XXXXX, XXXXX XXX  
XXXXX, XXXXX XXXXX

Re: Ketchum Public Schools  
OCR Case Number: 07-17-1250

Dear Mr. XXXXX:

On August 23, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability by the Ketchum Public Schools (District), Ketchum, Oklahoma. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

The Complainant alleged that the District prohibited her son, a student with a disability, from bringing his service dog to school. OCR notified the District in a letter dated October 27, 2017, that it would be investigating the following legal issue: whether the District discriminated against the Complainant's son on the basis of disability by prohibiting him from bringing his service animal to school in violation of 28 Code of Federal Regulations (C.F.R.) § 35.136(a) and 34 C.F.R. § 104.4(b)(1).<sup>1</sup>

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

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<sup>1</sup> OCR's October 27 letter also stated that OCR has implemented a rapid resolution process for complaints of discrimination based on disability that meet certain criteria established by OCR, and that OCR determined this complaint met OCR's criteria for the rapid resolution process.

Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

To protect individuals' privacy, OCR has not used the names of the Complainant, District employees, or other parties in this letter.

### **Legal Standard**

Under both the Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. §35.130(b)(1)(i), (ii) and (iii), school districts may not deny a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit, or service, afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded to others, or provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others.

In addition, the Title II regulations, at 28 C.F.R. §35.130(b)(7), require public entities to make reasonable modifications to their policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of a service, program, or activity it provides. Whether or not a particular modification or service would fundamentally alter a service, program, or activity is determined on a case-by-case basis. While cost may be considered, the fact that providing a modification to an individual with a disability would result in additional cost does not in and of itself constitute an undue burden.

The Title II regulations, at 28 C.F.R. §35.104, confer on individuals with disabilities the right to use a service animal in the programs and activities of all public entities, and limit the type of animal to a dog.<sup>2</sup> The dog must be 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.<sup>3</sup> Furthermore, the Title II regulations, in their service animal provisions at 28 C.F.R. §35.136(a), provide a specific and express application of §35.130(b)(7)'s modification requirements in situations where an individual with a disability desires to use a service animal to participate in a public entity's programs, activities, or services. It requires a public entity to modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability. The intent of the regulation is to provide to a service animal

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<sup>2</sup> Under 28 C.F.R. §35.136(i)(1), public entities must also make reasonable modifications in their policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. The regulation at 28 C.F.R. §35.136(i)(2) sets out factors public entities may consider to determine whether miniature horses can be accommodated in their facilities. The Title II regulations that apply to service dogs also apply to miniature horses.

<sup>3</sup> 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 crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

user the broadest access possible to a public entity’s programs and activities, and pursuant to 28 C.F.R. §35.136(g), individuals with disabilities must 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 service, programs, or activities, or invitees are allowed to go. Under 28 C.F.R. §35.136(e), a public entity is not responsible for the care or supervision of a service animal.

The Title II regulations, at 28 C.F.R. §35.136(f), limit the extent of inquiry that may be made of an individual using a service animal by prohibiting a public entity from asking about the nature or extent of a person’s disability. The regulations also limit the permissible questions that may be asked in order to determine whether an animal qualifies as a service animal to the following: 1) Is the animal required because of a disability?; and 2) What work or task has the animal been trained to perform? In general, these questions should only be asked if it is not readily apparent what service an animal provides for an individual with a disability. A public entity may not require documentation, such as proof that an animal has been certified, trained, or licensed as a service animal.

Pursuant to 28 C.F.R. §35.136(d), a service animal must be under the control of its handler, and shall have a leash, harness, or other tether, unless such a device interferes with the animal’s ability to perform its services or the handler is incapable of using such a device, in which case the animal must otherwise be under the handler’s control (e.g., through voice control, signals, or other effective means).<sup>4</sup> Public entities may legally exclude a service animal that is out of control if the handler does not take effective action to control it, as well as an animal that is not housebroken. *See* 28 C.F.R. §35.136(b). Public entities may not ask or require an individual with a disability to pay a surcharge for a service animal, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. *See* 28 C.F.R. §35.136(h).

In the context of elementary and secondary schools, the ability of a student with a disability to use a service animal is independent of his or her ability to receive a free appropriate public education (FAPE), and the determination of whether a dog is a service animal is not subject to the determination or review of a student’s Section 504 team or an Individualized Education Program (IEP) team. While a student’s receipt of a FAPE may be enhanced or supplemented by the use of a service animal, a service animal is not required in any way to enhance or increase the student’s ability to receive, or the actual receipt of, a FAPE.

In the event that a school district excludes a student’s service animal for a proper reason, then the district must permit the student to participate in the district’s programs and activities without the service animal. *See* 28 C.F.R. § 35.136(c). In those situations where a school district has reached a determination that a dog is not a service animal and, thus, the district is not required or obligated to permit the student to bring it to school, the district must permit its determination to

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<sup>4</sup> For more information, please see the July 2015 publication by the DOJ’s Disability Rights Section titled “Frequently Asked Questions about Service Animals and the ADA,” which states that in most settings, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. It specifies that in the K-12 school context, a school may need to provide some assistance to enable a particular student to handle his or her service animal. *See* [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html), question and answer # 27.

be reviewed pursuant to its internal grievance procedures and, when requested, must consider a student's request to bring the dog to school as a reasonable modification or accommodation. *See* 28 C.F.R. §35.130(b)(7); 34 C.F.R. §104.7(b); 28 C.F.R. §35.107(b).

### **Preliminary Investigative Findings**

The preliminary findings set out below are based on OCR's interview with the Complainant and review of documentation submitted by the Complainant and the District. The District asked to voluntarily resolve this complaint prior to OCR conducting interviews with District personnel.

#### *Background Information*

- The Complainant's son (Student) is XXXXX years old and currently in XXXXX grade. Student started attending the District during the 20XX-XX school year, when he was in XXXXX. During the 2016-17 and 2017-18 school years, Student attended Ketchum Elementary School.
- Student has XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX, and XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX, and XXXXX.

#### *Student's Service Dog and Alleged Denial of Access*

- Student's service dog, a XXXXX XXXXX XXXXX, is trained to XXXXX Student XXXXX by licking him. The dog is also trained to "XXXXX XXXXX XXXXX" Student, XXXXX XXXXX XXXXX, when XXXXX XXXXX XXXXX. In addition, the dog XXXXX Student XXXXX XXXXX when tethered to him. According to documentation the Complainant provided OCR, the dog was certified as XXXXX XXXXX service dog on XXXXX XXXXX, XXXXX, after undergoing extensive training.
- The Complainant informed Student's IEP team, during the 2016-17 school year, that Student was getting a service dog and, once it was fully trained, the dog might accompany Student to school.
- According to the Complainant, at Student's IEP meeting on XXXXX X, 2017, XXXXX XXXXX before the 2017-18 school year started, the Complainant told the IEP team members they needed to talk about Student's service dog "starting to come to school with him this year." The Complainant told OCR that the Ketchum Elementary School principal, who participated in the meeting, said she would "look into it" and also talk with the superintendent, who was the Ketchum Elementary principal during the 2016-17 school year.
- The Complainant walked Student to class on August XX, 2017, with his service dog, but did not leave the dog with Student since she had not yet received permission to have the dog attend school with Student. According to the Complainant, the Ketchum Elementary principal called her later that day, after lunch, and said Student's service dog would no longer be allowed in the school. The principal did not provide the Complainant a reason for the decision. Shortly thereafter, the Complainant went to Ketchum Elementary with her mother



*District's Grievance Procedure for Disability Discrimination Complaints*

- The District has a combined grievance procedure for complaints alleging discrimination on the basis of race, color, national origin, sex, religion, age, or disability titled “Grievance Procedure for Filing, Processing, and Resolving Complaints alleging Discrimination.”
- The process for filing a grievance under the District’s combined grievance procedure is to submit a written complaint to the individual(s) designated to coordinate the District’s efforts to comply with and carry out the District’s responsibilities under Section 504, Title II, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975 (compliance coordinator(s)). The procedure states that if the applicable compliance coordinator is the person alleged to have committed the discriminatory act(s), the complaint should be submitted to the superintendent for assignment. The superintendent is the District’s designated Section 504/Title II coordinator.
- The District’s grievance procedure states that the compliance coordinator with whom a complaint is filed will conduct a “complete and impartial investigation” into the complaint within 10 days of receiving the complaint, to the extent reasonably possible.

*Additional Information*

- The Complainant told OCR that she would consider reenrolling Student in the District for the 2018-19 school year if the District allows him to bring his service dog to school.

**Resolution**

Prior to the completion of OCR’s investigation into this complaint, the District signed an Agreement (copy enclosed) on February 12, 2018, that, when fully implemented, will address preliminary concerns identified by OCR. The Agreement requires the District to: revise its Board of Education policy regarding service animals; provide training to District administrators regarding the use of service animals and applicable Section 504 and Title II requirements; revise its grievance procedure for complaints made by or on behalf of students with disabilities alleging disability discrimination; and develop Section 504 due process procedures. In addition, the Agreement requires the District to permit Student’s service dog to accompany Student in District facilities and at District programs and activities. Please consult the Agreement for further details.

OCR considers this complaint resolved effective the date of this letter and will monitor the District’s implementation of the Agreement. When OCR concludes that the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume investigating the complaint.

Recipients of Federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Federal civil rights law. Complaints alleging such retaliation may be filed 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 that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

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.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ Kelli Douglas

Kelli Douglas  
Supervisory Attorney

Enclosure