



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

February 26, 2018

Sent via electronic mail to: XXXXXX@loupcountyschools.org

XXXXXX XXXXX
XXXXXX
XXXXXX XXXXX XXXXX
XXXXXX XXXXX XXXXX
XXXXXX, XXXXX XXXXX

Re: Sargent Public School
OCR Case Number: 07-17-1258

Dear XX. XXXXX:

On September 1, 2017, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint against the Sargent Public Schools (District), Sargent, Nebraska, alleging discrimination on the basis of disability. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleged the District discriminated against her on the basis of disability (XXXXXX XXXXX XXXXX) by denying her access to attend a televised college class at the high school when accompanied by her service dog.

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 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- 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.

As a recipient of FFA from the Department and a public entity, the District is subject to these laws. Additional information about OCR and the laws we enforce is available on our website at <http://www.ed.gov/ocr>.

In this letter, the Complainant is referred to as “the Complainant.” To protect individuals’

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

privacy, the names of employees, witnesses, and other parties also were not used in the letter.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

The Section 504 regulation, at 34 C.F.R. §104.4(a), provides that no qualified individual 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, under Section 104.4 (b)(1)(ii)-(iii) and (vii), a recipient, in providing any aid, benefit, or service, may not afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit or service that is not equal to or as effective as that afforded others, or “otherwise limit” a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service to beneficiaries. The Title II regulations at 28 C.F.R. § 35.130(a) and (b) are generally consistent with the substantive requirements under the Section 504 regulation above.

Pursuant to 28 C.F.R. § 35.136(f), a public entity may only ask if a service animal is required because of a disability and what work or task the animal has been trained to perform. Moreover, a public entity cannot require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Under 28 C.F.R. § 35.136 (g), 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.

Preliminary Findings and Resolution

The Complainant has a service dog which helps her get out of her chair, reminds her to take her medication and helps her when traveling stairs. The Complainant enrolled in a public speaking class at Mid-Plains Community College (College). The main College campus is in McCook, Nebraska. The College told OCR that the College has approved the Complainant’s use of her service dog as well as other academic adjustments.

The College has a satellite campus located in Broken Bow and students were able to remotely view the public speaking class at that campus. The College also streamed the class to Sargent High School where a high school student was viewing the class. The Complainant is a resident of Sargent, Nebraska, and after a couple of class periods, she requested to attend the class at Sargent High School because it was much closer to her home. Her request was approved by the College and the Sargent High School counselor.

The Complainant told OCR that when she went to the high school to view the public speaking class, the high school Principal raised his voice and yelled at her to get out while in the hall way near the office and told her that the service animal could no longer attend. The Complainant’s husband told OCR he called the District and spoke with the Principal and the Superintendent.

They told him because they were allowing her to view the class at the school they did not have to let her have her service animal. The Complainant's husband told OCR his children attend school in the District and the Complainant has taken the service animal to the District and she has never been denied access to the school buildings.

On February 12, 2018, the District requested to resolve the complaint before OCR completed its investigation. The District signed an Agreement (copy enclosed) on February 23, 2018, that, when fully implemented, will address the above-referenced allegations. The agreement requires the District to: 1) send a letter to the Complainant by certified mail informing the complainant that service animals are allowed on District property and informing the complainant of her right to file a grievance with the District if she believes she has been discriminated against concerning the use of her service animal; 2) notify District building administrators that service animals are allowed on District property and in District buildings in accordance with Section 504 and Title II. For more details, please consult the agreement.

OCR considers this complaint resolved effective the date of this letter, and will monitor the District's implementation of the Agreement. When OCR concludes 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 the investigation.

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 (XXX) XXX-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

Joshua Douglass
Acting Regional Director

Enclosure