



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
ARKANSAS  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

April 13, 2022

**SENT VIA EMAIL ONLY**

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XXX XXXXX XXXX XXXXXXX, XXXX, XXXX  
XXXXXXXX, XXXXXXXXX XXXXX  
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Re: South Central Nebraska Unified School District #5  
OCR Complaint Number: 07221003

Dear XX. XXXXXX:

On October 4, 2021, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the South Central Nebraska Unified School District #5, Fairfield, Nebraska alleging discrimination on the basis of disability.

OCR opened for investigation whether the South Central Nebraska Unified School District #5 discriminated against the Complainant based on disability in August of 2021, by failing to have a school district policy regarding the use of service animals. This letter is to acknowledge that on April 7, 2022, the South Central Nebraska Unified School District #5 voluntarily entered into a Resolution Agreement (Agreement) to resolve this complaint.

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 based on disability in programs and activities that receive federal financial assistance. 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.

Because the South Central Nebraska Unified School District #5 receives federal financial assistance from the U.S. Department of Education and is a public education entity, it is subject to Section 504, Title II, and OCR’s jurisdiction. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

To protect individuals’ privacy, the names of the Complainant, employees, witnesses, and other parties also were not used in the letter.

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## **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a school district’s programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a). The Title II regulation also requires public school districts 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. § 35.136, provides that a public school district generally must modify its policies, practices, or procedures to permit individuals with disabilities to use service animals. The 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 provides a non-exhaustive list of examples of work or tasks that may be performed by a service animal.

Under the Title II regulation, at 28 C.F.R. § 35.136, 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. A public school district 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 school district 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 Title II regulation 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. 28 C.F.R. § 35.136(b). In addition, if admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. 28 C.F.R. § 35.130(b)(7).

## **Preliminary Investigative Findings**

OCR interviewed the Complainant and the XXXXX XXXXX XXXXXXX and XXXX XXXXXXX XXXXXXXXXXX. The Complainant stated that in August and October of 2021, the Complainant’s service animal accompanied the Complainant to the XXXXX XXXXX XXXXXXX (the school is K-12). The Complainant stated that on the August 2021 visit, there was concern and dispute as to whether the Complainant’s service animal could accompany the Complainant into the school building. The Complainant told OCR, that the Complainant has never been denied entrance into the XXXXX XXXXX XXXXXXX with a service animal.

The South Central Nebraska Unified School District #5 advised OCR that following the events alleged in the complaint, the District reviewed and adopted a policy addressing service animals. On December 15, 2021, the South Central Nebraska Unified School District #5 adopted Policy #1260: Comfort and Emotional Support Animals of the South Central Nebraska Unified School District #5 related to the use of service animals. Additionally, the school district published its service animal policy on the school district’s website at the following link: [Policy #1260](#).<sup>1</sup>

After reviewing the information provided, OCR identified a need for South Central Nebraska Unified School District #5 to (1) disseminate its service animal policy to all school district staff and (2) provide training to administrators, support staff and teachers at the XXXXX XXXXX XXXXXX regarding the school district’s service animal policy. The South Central Nebraska Unified School District #5 indicated to OCR that the school district is willing to take these steps with respect to disseminating its service animal policy and training staff.

### **Resolution**

Prior to the completion of OCR’s investigation, the South Central Nebraska Unified School District #5 expressed interest in voluntarily resolving this complaint pursuant to Section 302 of OCR’s *Case Processing Manual*.<sup>2</sup> The South Central Nebraska Unified School District #5 submitted a signed Agreement (copy enclosed) on April 7, 2022, that when fully implemented, will address the allegations of this complaint. The Resolution Agreement requires the South Central Nebraska Unified School District #5 to provide training to school district staff at XXXXX XXXXX XXXXXX regarding the school district’s service animal policy and disseminate the policy to all school district staff. Please consult the Agreement for further details.

OCR considers the allegation of this complaint resolved effective the date of this letter and will monitor the South Central Nebraska Unified School District #5 implementation of the Agreement. When OCR determines the South Central Nebraska Unified School District #5 has fully implemented the terms of the Agreement, OCR will close this complaint. If the South Central Nebraska Unified School District #5 fails to carry out the Agreement, OCR may resume investigating the complaint. OCR will not close the monitoring of the Agreement until OCR determines that the District has demonstrated compliance with all the terms of the Agreement and is in compliance with Section 504 and Title II and their implementing regulations, which were at issue in this complaint.

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 OCR policy. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. Individuals who file complaints with OCR may have the right to

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<sup>1</sup> The District’s policy can be found online at <https://docs.google.com/document/d/1XZh020h-bXeVE4IOaxzZRYWWSp7LGuE8DzHADWxjSqU/edit>.

<sup>2</sup> OCR’s *Case Processing Manual* is available online at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

file a private suit in federal court regardless of whether OCR finds a violation.

The South Central Nebraska Unified School District #5 may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. 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. If 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.

If you have any questions, please contact XXXXXX XXXX, Attorney, at (XXX) XXX-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXXX.XXXXXXX.XXX.

Sincerely,

XXXXXXXX XXXXX

XXXXXXXX XXXXXX, Region VII