



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
COLORADO
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February 14, 2023

Dr. Dawn Foley
Superintendent
Higley Unified School District
2935 South Recker Road
Gilbert, Arizona 85295

By email only to superintendent@husd.org

Re: Higley Unified School District
OCR Case No. 08-22-1603

Dear Superintendent Foley:

On September 21, 2022, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against the Higley Unified School District (District). The Complainant alleged that the District discriminated against him on the basis of disability when the District treated him differently than non-disabled patrons during a youth football game as a result of his service animal's attendance, which ultimately prevented the Complainant from fully accessing the event.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to 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 by recipients of federal financial assistance; and, 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 on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulation.

I. Investigation Summary

On October 26, 2022, OCR opened the allegation for investigation in accordance with OCR's *Case Processing Manual* (CPM). OCR's investigation included interviewing the Complainant; and, reviewing documents pertinent to the complaint allegations, including information, records, and data from the District. During the course of the investigation, OCR identified concerns related to the District's compliance with Section 504 and Title II. The District voluntarily agreed

to address the allegation by signing the enclosed resolution agreement (Agreement), pursuant to Section 302 of the CPM.

II. Factual Findings

The Complainant is a disabled veteran and has a service dog (Service Animal) to assist him with his disabilities (*i.e.*, XX, XX, and XX). He is also a community member in the District's area and attended a youth football game at the XX High School (School) sports field on September XX, 2022. The District had previously rented the School's sports field to the youth football league (Youth Football) for weekly use. The rental agreement indicates that the Youth Football agreed to the District's "Rental Terms and Conditions" (Terms) as a prerequisite to entering into the agreement; however, the Terms were not provided to OCR for review.

During the course of the Youth Football game, the Complainant was approached by the District's Security Guard (Security Guard) and a Youth Football staff member (Staff Member), who is unaffiliated with the District. During the conversation, the Security Guard and Staff Member requested that the Complainant stay isolated in a specific area and not to enter the bleachers. Video evidence demonstrates that while the Complainant was attempting to explain the District's obligations regarding the use of service animals under Title II, the Security Guard responded that dogs are not allowed on campus; the sports field is "private property" and they can handle the situation "how we want to do it;" and if the Complainant wants to "sue us, you sue us." The Staff Member further stated that the District's Athletic Director called her and said that "the dog needed to go." During the approximately five-minute recorded conversation, the Service Animal is standing quietly in front of the Complainant while wearing a bandana that states "SERVICE DOG, DO NOT PET." Ultimately, the conversation ended because the Youth Football game had concluded.

In records provided by the District, the Security Guard provided a written statement on September 13, 2022, regarding his interaction with the Complainant on September XX, 2022. The Security Guard explained that after hearing the dog bark, he asked the Complainant to demonstrate "proof" that the animal was, indeed, a service animal. He further indicated that when the Complainant would not provide proof, he asked him to leave the sports field and that he was going to call the police. Finally, the Security Guard stated that to avoid further escalating the situation, he asked the Complainant to stay seated where he was and not to enter the bleacher area "for the safety of the elderly and small children."

Following the game, the Complainant contacted the District by email and conveyed his experience at the School. The District's Associate Superintendent contacted the Complainant by phone and expressed an apology on behalf of the District for the Complainant's experience. She also explained that the District intended to revise its policies and procedures and train relevant staff that are associated with the rental of District property. The District provided a copy of its policies and procedures to OCR, including Regulation IMG-RB, titled "Animals in Schools or at Public Events" (Regulation). The Regulation indicates that it was initially adopted on October 25, 2017, and last revised on November 10, 2022. OCR did not receive a copy of the prior

iteration of the Regulation. Further, the District provided an email, dated November 1, 2022, from the District's Rentals Specialist (Rentals Specialist) who indicated that trainings have not been conducted with regard to having service animals on campus, but that he was willing to conduct the trainings, if needed.

The Complainant also provided a photo of signage posted at the School, which he alleged that the Security Guard referenced during their interaction. The signage states, among other restrictions, the following: "NOT ALLOWED IN THE STADIUM ARE: ...2. Pets, (certified dogs to assist the visually impaired are permitted)." There is no other reference to allowable service animals on the sign. In its response to OCR, the District confirmed that the sign was previously posted, but explained that it had since been removed and the District was willing to install new signage.

III. Legal Standards

The Section 504 regulations, at 34 C.F.R. § 104.33, provide 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. The Title II regulations create the same prohibition against disability-based discrimination by public entities.

The Title II regulations, at 28 C.F.R. § 35.104, define "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 handler's disability. Examples of work or tasks include, but are not limited to, ... helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

Under the Title II regulations, a public entity generally must modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability. A public entity may ask an individual with a disability to remove a service animal from the premises if: (a) the animal is out of control and the animal's handler does not take effective action to control it; or (b) the animal is not housebroken. If a particular service animal behaves in a way that poses a direct threat to the health or safety of others, has a history of such behavior, or is not under the control of the handler, that animal may be excluded.¹

In determining what constitutes a direct threat, 28 C.F.R. Section 35.139(b) provides that a public entity must make an individualized assessment, based on reasonable judgment that relies

¹ United States Department of Justice, Civil Rights Division, Disability Rights Section, "Frequently Asked Questions about Service Animals and the ADA," available at: <https://www.ada.gov/resources/service-animals-faqs/> (July 2015).

on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

Furthermore, “[a]llergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.” If an individual is allergic to dog dander, the public entity has an obligation to accommodate that individual as well as the individual with the service animal.²

The Title II regulations, at 28 C.F.R. §35.136(f), also limit the extent of inquiry that may be made of an individual using a service animal. A public entity is prohibited from asking about the nature or extent of a person’s disability, and is limited to two permissible questions that may be asked in order to determine whether an animal qualifies as a service animal: (1) is the animal required because of a disability; and (2) what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

IV. Analysis

The evidence obtained during the course of OCR’s investigation indicates that the Complainant was permitted to attend the Youth Football game on the School campus on September XX, 2022; however, OCR noted concerns regarding the Complainant’s treatment during the event and factors ultimately contributing to the interactions, including the District’s signage, policies and procedures, and lack of staff training.

OCR found that during the football game, the Complainant was subjected to ongoing requests to isolate himself and his Service Animal to a specific area for viewing. While the Security Guard asserted that he heard an animal bark, the video footage fails to demonstrate that the Service Animal was out of control or that the Complainant failed to control the animal; rather, the Service Animal remained calm and did not bark during the course of the five-minute interaction. In addition, the Security Guard’s inquiry regarding “proof” of the Service Animal’s status does not accord with the allowable questions; and, moreover, the Security Guard’s request for the Complainant to leave or segregate from others, due to being on “private property” was improper and failed to consider the allowable instances for removal under Title II. Further, the signage at the School improperly implied that the only allowable animals on the School’s campus are those for the “visually impaired.”

In addition, prior to the Complainant’s report to the District, it is unclear whether the District maintained policies and procedures relevant to the use of service animals on District property. And, while the District requires the review and acceptance of its Terms when entering into a

² United States Department of Justice, Civil Rights Division, Disability Rights Section, “ADA Requirements: Service Animals,” available at https://www.ada.gov/service_animals_2010.htm (July 2011).

rental agreement, it was not apparent during the course of OCR's investigation whether the Terms address the obligation to permit the use of a service animal on campus by an individual with a disability, consistent with the requirements of Section 504 and Title II. Moreover, the Rentals Specialist confirmed that related training had not yet been conducted with relevant staff.

In the District's data response to OCR, as well as during phone calls between the District and OCR, the District expressed an interest in voluntarily resolving the allegation and confirmed its intention to resolve OCR's concerns through a voluntary resolution agreement by email on January 13, 2023. Pursuant to Section 302 of the CPM, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and when OCR has determined that identified concerns can be addressed through a voluntary resolution agreement.

V. Conclusion

The District voluntarily agreed to address OCR's concerns by signing the enclosed Agreement on February 13, 2023. When fully implemented, the Agreement will resolve the remaining allegation raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the complainant(s) and the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statute and regulations. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-22-1603 and will send a letter to the Complainant and to the District stating that the case is closed.

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. Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must 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, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we 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.

OCR thanks the District for being willing to voluntarily address the allegations raised by the complaint. OCR appreciates the District's attention to this matter and looks forward to working with the District to meet the terms of the Agreement.

If you have any questions, please contact XX, the attorney assigned to this case, at XX or XX.

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Attachment: Resolution Agreement

cc: Lori A. Bird
Attorney at Law
Udall Shumway
By email only to XX

Tom Horne
State Superintendent of Public Instruction
Arizona Department of Education
By email only to questions@azed.gov