



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

October 14, 2016

Mike Bolokowicz
Director, Human Resources
Los Angeles Public Library
630 W. 5th Street
Los Angeles, California 90071

(In reply, please refer to case no. 09-15-4015.)

Dear Director Bolokowicz:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Los Angeles Public Library (Library). The Complainant¹ alleged that the Library discriminated against him on the basis of disability. Specifically, OCR investigated the following issues:

1. Whether the Library discriminated against the Complainant based on disability by delaying his entrance to the Library due to his service animal; and
2. Whether the Library discriminated against the Complainant based on disability by failing to afford him a prompt and equitable grievance procedure to address his complaint of disability discrimination.

OCR is responsible for enforcing Title II of the Americans with Disabilities Act (ADA) of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. The Library is a public entity, and is therefore subject to the requirements of Title II and its implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents, correspondence and information provided by the Complainant and the Library. With respect to allegation one, the Library expressed interest in resolving the concerns identified by OCR prior to the conclusion of the investigation of this allegation, and OCR determined that voluntary resolution was appropriate. With respect to allegation two, based on the information obtained, OCR found sufficient evidence of noncompliance with Title II and its implementing regulation. The applicable legal standards, the facts obtained during the investigation, and the reasons for our determination are summarized below.

Allegation 1: Whether the Library discriminated against the Complainant based on disability by delaying his entrance to the Library due to his service animal.

¹ OCR notified the Library of the Complainant's identity at the beginning of the investigation. OCR is withholding the Complainant's name from this letter to protect the Complainant's privacy.

Legal Standards

Service Animals

The Title II regulations, at 28 C.F.R. §35.130 (a) and (b), provide that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by a public entity. In addition, under §35.130(b)(3), public entities may not use methods of administration that have the effect of subjecting qualified individuals to discrimination on the basis of disability. Section 35.130(b)(i)(v) provides that if a public entity provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the entity must take steps to obtain compliance from the organization or terminate its assistance.

The Title II regulations, at 28 C.F.R. §35.130(b)(7), also require public entities to make reasonable modifications in 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 the service, program, or activity.

The regulations, at 28 C.F.R. 35.136, require a public entity to “modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability” and define a service animal as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.² In situations where it is not obvious that the dog is a service animal, staff may ask only two specific questions: (1) is the dog a service animal required because of a disability; and (2) what work or task has the dog been trained to perform? Staff members are not allowed to request documentation showing that the dog is a service animal, require that the dog demonstrate its task, or inquire about the nature or extent of the person's disability. 28 C.F.R. §35.136 (f).

Notice of Non-Discrimination

The Title II regulations, at 28 C.F.R. §35.106, similarly require a public entity to inform applicants, participants, beneficiaries, and other interested persons about the protections against disability discrimination assured by Title II and the regulations. Under 28 C.F.R. §35.107(a), public entities employing 50 or more persons must also notify all interested individuals of the name, address, and telephone number of the designated Title II compliance coordinator.

Findings of Fact

² In specific, 28 U.S.C. §34.104 provides:

Service animal means 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 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. 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.

Incident

The Library is a department of the City of Los Angeles (City). It is staffed with security guards, called Los Angeles Police Department (LAPD) security personnel, who are LAPD employees.

The Complainant self-identifies as an individual with several disabilities. According to the Complainant, he has a service dog who he states is trained to assist him.

According to the Complainant, he and his service dog went to the Central Branch of the Library in downtown Los Angeles on September XX, 2014. A security guard (Guard 1) stopped him at the entrance and told him that he could not bring a dog into the Library. The Complainant informed Guard 1 that the dog was his service dog.

Guard 1 asked the Complainant what his disability was, and the Complainant responded that such a question should not be asked. A delay ensued and Guard 1 declined to admit the Complainant into the Library. Guard 1's supervisor (Supervisor 1) subsequently became involved, and he permitted the Complainant and his dog to enter the Library. The Complainant stated that he was allowed to enter after he provided documentation for his dog.

Approximately five hours later, the Complainant wanted to briefly leave the Library. Prior to exiting the Library, he informed another security guard (Guard 2) that he and his dog were exiting the Library and would return shortly. When the Complainant and his dog returned to the Library about fifteen minutes later, Guard 2 denied the Complainant entry to the Library, and told him that he could not bring a dog into the Library. The Complainant then reminded Guard 2 that he had just left the Library a short time before, but nonetheless Guard 2 refused to allow him to enter. The Complainant told Guard 2 that he was disabled and was with his service dog, and that Supervisor 1 had permitted him and his dog to enter the Library earlier in the day. When the Complainant started walking toward the help desk to seek assistance, Guard 2 called his supervisor (Supervisor 2).

As Supervisor 2 and Guard 2 stood in the Complainant's path, Guard 1, now off-duty in civilian clothes, passed by and informed Supervisor 2 and Guard 2 that Supervisor 1 had permitted the Complainant and his dog to enter the Library. Shortly thereafter, the Complainant was detained in the Library. The Complainant and the Library provided OCR with a link to videos on YouTube of the incident (Incident). In the videos, the Complainant repeatedly refers to himself as an individual with a disability and asks the security guards around him for a complaint form to file an ADA complaint. The security guards do not acknowledge his request or provide him with a complaint form.

The Library provided OCR with a Vital Facilities Report (VF Report), completed by Supervisor 2, and a Request for Service Report, which included a list and brief description of all of the incidents that took place in the Library on the afternoon of September XX, 2014, including the Incident. The VF Report, written on a form with a "City of Los Angeles" heading, was completed by the Watch Supervisor on duty at the Library approximately twenty-four hours after the Incident. The Library did not provide any documentation showing to whom the completed VF Report was submitted, whether the Library received a copy of it or whether the LAPD or the Library, was instructed to take any steps upon receipt. Moreover, there is no indication on the VF Report itself about next steps or to whom it was forwarded for review.

The VF Report states that the Complainant attempted to enter the Library with a small white dog and was told by Guard 2 that pets were not allowed in the Library. The VF Report is silent as to whether Guard 1 asked the Complainant about the nature of his disability. The Complainant's entry to the Library was delayed until Supervisor 2 became involved and admitted the Complainant to the Library, as he had interacted with the Complainant earlier in the day.

In its narrative response to OCR, the Library did not confirm or deny the Complainant's account of the Incident. It stated instead that the Complainant's allegations involved the actions of the security guards, who were not employees of the Library but rather of the LAPD. As such, the Library asserted that it exercised no control over the "supervision, training, or discipline" of the security guards.

MOA between Library and LAPD Regarding Security Services

Following further document requests from OCR, the Library produced a Memorandum of Agreement (MOA) between the Library and the LAPD concerning the provision of security services for the Library. The MOA states that the security guards' responsibilities include enforcing Library rules of conduct and policies; notifying designated Library staff of critical incidents and unusual occurrences in a timely manner; and notifying the Library business manager as soon as possible of an issue that will directly impact the Library. Data from the Library also show that the Library pays invoices for the LAPD for actual costs incurred, plus overhead, for the LAPD security guards assigned to the Library.

Non-discrimination policies and training

The City has a non-discrimination policy, which is distinct from its grievance procedure, and applies to the Library, which is a City entity. This policy states that the City's policy is "to provide access to its programs and services for persons with disabilities in accordance with Title II of the ADA." This statement is also posted on the Library website, as is the Library's service animal policy. The latter states, "Service animals as defined by the Americans with Disabilities Act (ADA), as amended, are welcome in all public libraries."

The Library provided OCR with a copy of the materials used to provide training to Library staff. These included the City Compliance Responsibilities under the ADA, the Department of Justice's ADA 2010 Revised Requirements for Service Animals, a PowerPoint presentation delivered by City of Los Angeles Department on Disability, and information sheets on understanding the ADA and on interacting with clients with disabilities. Between January 2013 and March 2015, staff from the City Department on Disability conducted supervisory ADA training at the Central Library on January 24, 2013, January 14, 2014, March 5, 2014, August 28, 2014, and March 11, 2015. The supervisory ADA training on March 11, 2015 included a reference to the City's non-discrimination policy, which is to "provide access to programs and services for persons with disabilities in accordance with Title II of the ADA." The PowerPoint presentation also includes seven slides on service animals, including a definition, handler responsibilities, service animal inquiries, the limited circumstances under which service animals may be removed, and a hypothetical scenario. The Library stated that after receiving training, the attendees, primarily Senior Librarians and Principal Librarians, then train their staff.

The Library stated that it did not provide the aforementioned training to the security guards, as they are not Library employees. OCR requested additional documentation about any Title II training provided to the security guards by the LAPD. The Library stated that a three-page document of regulations from the Department of Justice was read by the Chief Security Officer to the LAPD officers on July 15, 2014; July 24, 2014 and August 2, 2014 in lieu of roll call. The Library provided a copy of these regulations to OCR.

Guard 1, Supervisor 1, and Supervisor 2 appear to have received the training; Guard 2 does not appear to have received the training. The training lasted thirty minutes. No other materials were used or provided.

Analysis

As a public entity covered by Title II, the Library may not exclude individuals from participation or deny them services based on disability. The Library initially asserted that it had no control over the supervision or management of the security guards stationed at the Library, as they were LAPD employees. However, it is the Library's responsibility under the regulations to make sure that it does not deny access to its programs and services to individuals with disabilities, whether through the actions of its own employees or employees of the LAPD for which the Library provides significant assistance in the form of reimbursement to the LAPD for salaries and costs. 28 C.F.R. §§35.130(b)(3) & (b)(i)(v). Furthermore, OCR notes that pursuant to its MOA, the Library must ensure that all personnel on the premises enforce Library policies and procedures, which includes its own ADA non-discrimination policy applicable to patrons with disabilities. Consequently, OCR's investigation to date raised concerns about the consistent application of Library anti-discrimination policies as they relate to security staff who interact with members of the public, including those with disabilities seeking to use Library services.

OCR's investigation to date also raised concerns about security guards' understanding of the questions that may be asked of and documentation that may be required of an individual with a service animal when entering a location subject to Title II regulations for public entities. The regulations provide that queries of individuals with service animals is limited to two questions: 1) is the animal required because of a disability; and 2) what work or task has the animal been trained to perform? 28 C.F.R. §35.136(f). In order to gain entry to the Library on the first occasion, the Complainant stated that he was first asked what his disability was by Guard 1 and then delayed entry into the Library until he provided documentation for the dog to the Supervisor, which the regulations state should not be required. If true, such questioning and requirement to provide documentation for entry raises concerns about whether Library security guards received adequate training regarding their Title II obligations to individuals with disabilities accompanied by service animals. In addition, upon returning to the Library later that same day, he was subjected to further delays before entry.

However, prior to the completion of OCR's investigation of this allegation, the Library expressed an interest in resolving this allegation through a Resolution Agreement (Agreement) pursuant to Section 302 of OCR's Case Processing Manual. OCR determined that it was appropriate to resolve this allegation under this section. In order to complete the investigation of this allegation, OCR would have needed to complete interviews with the security guards, supervisors, Library staff and potentially other witnesses. Without admitting to any violation of the law, the Library signed the enclosed Agreement which is intended to resolve the concerns that OCR identified during its investigation of this allegation. Pursuant to the Agreement, the Library will post a notice of non-discrimination at all Library branches, provide individual remedies for the Complainant, and Title II training for Library staff and LAPD security guards.

Allegation 2: Whether the Library discriminated against the Complainant based on disability by failing to afford him a prompt and equitable grievance procedure to address his complaint of disability discrimination.

Legal Standard

The Title II regulations, at 28 C.F.R. §35.107(b), require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures. OCR examines a number of factors in evaluating whether a recipient/public entity's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

The Title II regulations, at 28 C.F.R. §35.106, similarly require a public entity to inform applicants, participants, beneficiaries, and other interested persons about the protections against disability discrimination assured by Title II and the regulations. Under 28 C.F.R. §35.107(a), a public entity employing 50 or more persons must also notify all interested individuals of the name, address, and telephone number of the designated Title II compliance coordinator.

Findings of Fact

The Library has a complaint form called a Patron Concern Form (Form). It includes space at the top of the Form for an individual to provide his or her name, e-mail address, postal address, phone number and today's date. Then, the Form includes the following instruction, followed by twelve lines on which to express a concern: "Please provide us with some information about your concern (such as location, date, time, or other supporting information." At the bottom of the page, the Form states:

We appreciate you taking the time to fill out this form. Your concern will be read and we will do our best to respond, if it is necessary and you have provided us with an e-mail address or mailing address where you may be reached.

On October XX, 2014, the Complainant returned to the Library and filed a complaint in reference to the Incident. The Library corroborated the Complainant's assertion that the Complainant returned to the Library, asked to file a complaint and was given a copy of the Form.

The Library provided OCR with the Complainant's Form and his complaint. The seven-page complaint that the Complainant filed with the Library is the same complaint that he filed with OCR, and provides a detailed account of his multiple attempted entrances to the Library and subsequent treatment by LAPD.

The Complainant stated that after making copies of his complaint when the Library Assistant declined to do so at the information desk, he returned to the information desk and asked the Library Assistant again to sign his paperwork. She declined, and he asked how he would know that his paperwork had been turned in. The Library Assistant described the policy, which was to place the paperwork in a box behind the information desk, at which point the building manager would attend to it. The Complainant asked for the Library Assistant's name, which the Library Assistant provided. He then gave the paperwork to the Library Assistant and left the information desk.

At the bottom of the Form, there is a line next to the words: "received by." On that line, the Complainant wrote the following: "[Name of Library Assistant] did not want to sign." Then, on the line next to the words "follow-up," the Complainant wrote: "I told [name of Library Assistant] she did not want to sign this or make copies for [name of Complainant] or/access."

No investigation of the complaint was ever completed. In its Data Response to OCR, the Library stated:

Exactly where the form traveled after [Library Assistant] placed it in the box behind the Information Desk is unknown at this time. The City is presently trying to determine what happened to this form, why it did not make it to Library Human Resources and/or the LAPD, as well as what will be the best system in the future.

OCR spoke with Library staff and EEO Division Manager (Manager) during the investigation. The Manager acknowledged that the Library had not investigated the Complainant's complaint, and that the Library system for processing complaints needed to be improved.

The VF Report did not mention the Complainant's request for a complaint form, even though the Complainant reiterated this request several times in the videos of the Incident. Nor did it reference the fact that the Complainant repeatedly referred to himself as an individual with a disability and identified his dog as a service dog.

In response to OCR's request for policies and procedures for accessing services for individuals with disabilities, the Library provided a link to the following web page: <http://www.lapl.org/about-lapl/ada>. The page does not include any process or procedures for filing a grievance about disability discrimination; OCR did not receive any grievance procedures from the Library in response to OCR's request for such procedures.

Analysis and Conclusions of Law

The Title II regulations require that public entities: 1) adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination and 2) have and properly distribute a notice of nondiscrimination.

In response to OCR's request for the Library's non-discrimination policy and a description of how and where the policy is posted and/or made accessible to the public, the Library directed OCR to its website and produced flyers posted at Library locations. The Library's website does have a notice of non-discrimination under its "ADA Services" tab, but this notice does not identify a Title II coordinator. Additionally, the flyers received by OCR concerned Library programs and events, such as computer classes. The only reference to the ADA was a phone number for the public to call to request ADA accommodations prior to attending a Library event. These flyers did not include any notice of nondiscrimination, and OCR did not receive any information showing that the notice of non-discrimination on the Library's website was posted on Library premises. *See generally* 28 C.F.R. §§ 35.106 & 35.107(a) (describing requirements for notice and coordinator).

Nor does the Library have grievance procedures that provide for the resolution of complaints of discrimination that are readily accessible to, and easily understood by, patrons of the Library. In this regard, during the Incident, the Complainant repeatedly asked the security guards for a complaint form and stated that he wished to file a complaint. The security guards failed to provide the Complainant with information about how to file such a complaint, provide him with a complaint form, or direct him to a Library staff person who could provide such information. In addition, the Form that is currently in effect

does not provide complainants with the assurance of any response. Rather, the Form states that complainants will receive a response if the Library deems a response to be necessary and does not specify the circumstances under which a response would be necessary or required. After filing his complaint, the Complainant never received a response to or a resolution of his allegations of disability discrimination, and the Library admitted that it did not investigate the complaint, in part, because it had misplaced the original complaint that was filed. Furthermore, the Form does not distinguish between complaints of discrimination and other complaints, identify an individual responsible for processing and resolving complaints of discrimination, or provide information to complainants about investigative steps or the timeline for which a response will be received.

As such, based on the documents reviewed, interviews conducted, and information received from the Complainant, Library staff and Manager, OCR found that the Library does not have a process to track the receipt, status or resolution of complaints that are filed or a published grievance procedure. Nor does the Library have a mechanism to distinguish those complaints that require a response, such as complaints alleging discrimination, from those which may not. In addition, OCR is concerned that the security guards were not properly trained on the complaint filing process, as they never obtained a complaint form for the Complainant after he requested one, or sought the assistance of a Library staff person to obtain one. Consequently, even though it had a process through which patrons could register concerns, including concerns of discrimination, the Library failed to ensure that this system could promptly and equitably resolve the Complainant's complaint of disability discrimination as required by Title II and its implementing regulation.

The investigation also raised concerns about whether the Library had a trained Title II Coordinator in place at the time of the Incident because the Form provided to the Complainant did not include any contact information for the Library's Title II Coordinator and no information about such a Coordinator was provided to OCR in response to its request for information about the Library's disability grievance procedures or notice of nondiscrimination.

In conclusion, OCR finds that the Library is out of compliance with Title II and its implementing regulations because it did not (1) have grievance procedures to promptly and equitably resolve complaints of disability discrimination and did not promptly and equitably resolve the Complainant's complaint of discrimination, (2) have a legally compliant notice of nondiscrimination with the contact information for the Title II Coordinator, and (3) properly distribute such notice of nondiscrimination.

The Library signed the enclosed Agreement to resolve the violations and concerns that OCR identified during its investigation of this allegation. Pursuant to the Agreement, the Library will develop a legally compliant discrimination complaint form and grievance procedure and a guidance memorandum for Library staff and LAPD security guards, which provides direction on how to use the complaint form and grievance procedure and ensure that it is available to individuals who want to file a complaint.

Conclusion

This concludes the investigation of this complaint. To address the issues alleged in the complaint, the Library, without admitting to any violation of law, entered into the enclosed Agreement which is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant and the Library concurrently. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the Library is in compliance with Title II and its implementing regulations which were at issue in this case, including 28 C.F.R. §35.130 (a) and (b), 28 C.F.R. §35.130(b)(3), 28 C.F.R. §35.130(b)(7), 28 C.F.R. §35.136., 34 C.F.R. §104.8(a) and (b), 34 C.F.R. §104.7(a), 28 C.F.R. §35.106, and 28 C.F.R. §35.107(b).

OCR's determination in this matter should not be interpreted to address the Library's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the Library may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released could reasonably be expected to constitute an unwarranted invasion of privacy. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

If you have any questions, please contact Shilpa Ram or Alexis Turzan, Civil Rights Attorneys, at shilpa.ram@ed.gov or alexis.turzan@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: Noreen Vincent, City Attorney
XXXXXX XXXXXXXX, City Department on Disability
XXXXXX XXXXXXXX, City Personnel Department
XXXX XXXXXXXX, Director, Central Library
XXXXXX XXXXXXXX, Director, Branch Library Services