



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

May 4, 2017

Dr. David Vierra
Superintendent
Antelope Valley Union High School District
44811 N. Sierra Highway
Lancaster, California 93534-3226

(In reply, please refer to OCR Docket Number 09-16-7004.)

Dear Superintendent Vierra:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Antelope Valley Union High School District (District). The Complainant alleged that the District discriminated against him on the basis of disability when he was prevented from accessing a District school because he was accompanied by his service dog.¹ The Complainant further alleged that the District's policy and procedure governing use of service animals discriminates against individuals with disabilities. On February 23, 2017, OCR administratively closed the individual allegation because the Complainant had filed the same allegation with the Department of Fair Employment and Housing. OCR proceeded with an investigation of whether the District's policy regarding use of service animals was in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II).

OCR investigated this complaint pursuant to its authority under Section 504 and Title II. Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is therefore subject to the requirements of Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered in the investigation, we concluded that the District's policy failed to meet the requirements of Section 504 and Title II. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

¹ OCR previously provided the District with the identity of the Complainant. We are withholding the Complainant's name from this letter to protect the Complainant's privacy.

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 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. Whether or not a particular modification or service would fundamentally alter the program is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to a disabled individual would result in additional cost does not of itself constitute an undue burden on the program.

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 but limit the type of animal to a dog only. 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.²

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 the 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 user the broadest access possible to a public entity's programs and activities and, as such, as provided by 28 C.F.R. §35.136(g), a service animal user has the ability to go anywhere with his or her service animal that any individual without a disability is permitted to go.

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 by prohibiting a public entity from asking about the nature or extent of a person's disability and limiting the permissible questions that may be asked in order to

² 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.

determine whether an animal qualifies as a service animal to only two: (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. There are additional obligations and prohibitions imposed on both individuals with disabilities and public entities with respect to service animals which are relevant to this matter, namely: public entities have the ability to exclude any animal that is out of control and the handler does not take effective action to control it or it is not housebroken (28 C.F.R. §35.136(b)); a service animal must be under the control of its handler generally through the use of a leash, harness, or other similar device 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 control (28 C.F.R. §35.136(d)); a public entity is not responsible for the care or supervision of a service animal (28 C.F.R. §35.136(e)); and, a public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets (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. 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 be reviewed pursuant to its internal grievance procedures and, when requested, it must consider a student's request to bring the dog to school as a reasonable modification or accommodation. 28 C.F.R. §35.130(b)(7); 34 C.F.R. §104.7(b); 28 C.F.R. §35.107(b).

Findings of Fact

The following facts are relevant to OCR's analysis.

The District's policy and administrative regulations governing service animals, entitled "Animals at School" and adopted on July 22, 2015, are located at Board Policy (BP) and Administrative Regulation (AR) 6163.2. The District's policy applies broadly to any animals brought to a school campus, including service animals.

The first part of AR 6163.2 addresses use of animals for instructional purposes. It requires any student or employee to receive written permission from the principal prior to bringing any animal to school for an instructional purpose. The principal will give permission only after providing written notification to all parents of students in the affected class to verify whether their children

have any known allergies or health conditions that would be aggravated by the animal's presence. This section also requires that all animals be in good physical condition, adequately fed and effectively controlled, including properly housed in cages or containers. Additionally, it requires that service dogs provide annual proof of several vaccinations – namely, Distemper, Hepatitis, Leptospirosis, Parainfluenza, Parvovirus, and Caronavirus (DHLPPC), Bordetella, Roundworms, Hookworms and Rabies. State and local law only require that dogs be vaccinated for Rabies. Only service animals are allowed on school transportation services.

The second part of AR 6163.2 addresses the use of service animals by individuals with disabilities. It permits persons with disabilities to be accompanied by service animals in its school buildings, in classrooms, and at school functions subject to prior approval of a written request for access. The request must meet specific requirements, including that it must be delivered at least 15 days in advance, and include documentation of licensing and several vaccinations. Service animals must be spayed or neutered, treated for or be free of fleas and ticks, and kept clean and groomed to avoid shedding and dander. All owners of service animals must assume liability for any harm or injury caused by the animal to other persons and/or property. To be a service animal, the animal must be "required" for the individual with a disability and "individually trained" to do work or a task for the individual with a disability. Service animals may be removed if its presence would "fundamentally alter" the nature of the service, program, or activity.

Under its policy, the District requires those bringing a service animal on a campus to complete a form (Form E6163.2), which among other things, requires the owner to indicate if the service animal performs a task that "mitigates" the individual's disability, has an offensive odor, knows whether to urinate or defecate in an appropriate location, and solicits attention that might annoy others, vocalizes unnecessarily or shows aggression. If the primary handler is not the individual with a disability, the form asks if the individual has completed and passed a Department of Justice/Federal Bureau of Investigation (DOJ/FBI) background screening. If the handler is a student, the form asks if the individual has a Section 504 plan or IEP. The District's visitor policy, which applies to anyone who is not a student or employee, does not contain a background screening requirement. The form also requires evidence that the animal is covered by adequate liability insurance, if available.

Analysis and Conclusion of Law

Based on its review of BP/AR/E 6163.2 (hereinafter, the policy), OCR concludes that the District's policy does not meet the requirements of Section 504, Title II and their implementing regulations.

Under Section 504, school districts cannot implement policies that have the effect of denying individuals with disabilities access to services, programs and activities. Moreover, Title II and its implementing regulations require that school districts permit the use of service animals by individuals with disabilities. The regulations permit school districts to ask an individual accompanied by an animal two questions to determine if the animal qualifies as a service animal: (1) is the animal required because of a disability, and (2) what work or task has the animal been trained to perform. The regulations permit removal of a service animal in limited circumstances: if the animal is out of control and the animal's handler does not take effective action to control it,

and if the animal is not housebroken. If an animal is properly excluded, the school district must give the individual with a disability the opportunity to participate in the service, program or activity without having the animal on the premises. In general, service animals are subject to the same licensing and vaccination rules that are applied to all dogs under local law.

OCR determined that the District's policy as written is not in compliance with Section 504 and Title II because it places requirements on individuals who use service animals that are not permitted by the regulations and places an additional burden on access to the District to individuals with disabilities that is not placed on those without disabilities. Among other things, OCR found that the policy establishes requirements for the use of animals for instructional purposes, such as prior written permission, that are not in compliance with the regulations, and does not exempt service animals from those requirements. In addition, the policy requires individuals with disabilities who wish to be accompanied by a service animal to a District class, function or event to submit a written request to the District office at least 15 days in advance, which puts a burden on access for individuals with disabilities who want to visit or enroll in the District that is not placed on individuals without disabilities. The policy also includes a requirement to provide "individual[]" training to the service animal, even if group or some other type of training would be sufficient under the regulation for the animal to conduct the work or task for the individual with a disability. In addition, the policy requires that individuals with disabilities vaccinate their service animals to a greater extent than others.

Furthermore, the request form requires owners of service animals to provide information that is not permitted by the regulations, such as: proof that the service animal is covered by adequate liability insurance, if available; information about whether the applicant student has an IEP or Section 504 plan; and for primary handlers who are not students or employees with disabilities, proof of DOJ/FBI screening clearance. Such clearance is not required of other visitors to the District. It also asks whether the service animal performs task(s) or work that "mitigate" the individual's disability, which is not one of the two questions that the regulations permit for determining whether an animal is a service animal. The request form also imposes requirements that appear to go beyond the regulation's requirement that the dog be kept under the handler's control at all times. For example, even if the dog is completely under the owner's control, he or she cannot control whether another individual is annoyed by the mere presence of the dog.

Accordingly, OCR determined that the District is in violation of Section 504 and Title II and the implementing regulations with regard to the allegation investigated in this case.

Conclusion

To address the issues alleged in the complaint, the District entered into the enclosed resolution agreement which is aligned with the complaint allegation and the findings and information obtained by OCR during its investigation. Specifically, the resolution agreement requires the District to revise its policies, procedures and forms to comply with the requirements of Section 504 and Title II, including discontinuing the use of form E6163.2 for individuals with disabilities who have service animals, post and provide notice of the revised policies and procedures, draft and

distribute a guidance memorandum to all District staff regarding the use of service animals at school, and provide training to District administrators concerning the use of service animals.

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 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 District is in compliance with Section 504, Title II, and their implementing regulations.

OCR's determination in this matter should not be interpreted to address the District'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 District may not harass, coerce, intimidate, retaliate, 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 correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Monique Raco Fuentes at 415-486-5587.

Sincerely,

/s/

Mary Beth McLeod
Program Manager

cc: Bridget L. Cook, General Counsel for the District (*via e-mail*)