



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

February 13, 2018

**VIA ELECTRONIC MAIL**

Ms. Nancy Albarrán  
Superintendent  
San Jose Unified School District  
855 Lenzen Avenue  
San José, California 95126

(In reply, please refer to case no. 09-18-1024.)

Dear Superintendent Albarrán:

On October 12, 2017, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against San José Unified School District (District). The complainant<sup>1</sup> alleged that the District denied him access to the field at a District school on October X, 2017 due to the presence of his service animal.

OCR began its investigation of this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR that it was amenable to resolving the complaint in this manner. OCR and the District

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<sup>1</sup> OCR previously provided the District with the complainant's name and the name of the school where the incident occurred. We are withholding this information from this letter for privacy reasons.

entered into the attached agreement to resolve the complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Section 504 and Title II.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

### Legal Standards

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), 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 which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities.

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.<sup>2</sup> 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 any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability. 28 C.F.R. §35.136.

OCR's preliminary investigation showed the following:

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<sup>2</sup> 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.

The complainant told OCR that he attended his XXXXXXXXXXXX XXXXXXXXXXX XXXX, which was held on the premises of a District school (School), on October X, 2017, accompanied by his wife and his service dog. He and his wife sat on the grassy area at the perimeter of the field, and were approached by a man wearing a name tag (Field Supervisor), who told the complainant that his dog was not allowed on the field.

The complainant also told OCR that he had explained to the Field Supervisor that he was not sitting on the field itself and his dog was not a pet but a service dog. The complainant and the Field Supervisor spoke further and the Field Supervisor informed him that he could not remain on the field with his service dog. The complainant left the grassy perimeter of the field and sat down in an area away from the field toward the fence, still on school property. He told OCR that he felt that he had been discriminated against due to the presence of his service dog.

Finally, the complainant told OCR that he had gone to see the principal of the School (Principal) the following day to explain what had happened and to provide information about service dogs. The Principal accepted the information from the complainant and said that he would confirm whether the Field Supervisor was a District employee.

The District confirmed to OCR that the meeting between the Principal and the complainant had taken place, that the Field Supervisor was indeed a District employee, and that the complainant had expressed to the Principal how upset he had been when asked to leave the field due to the presence of his service dog. The District also told OCR that District administrators had begun to discuss the issue of service animals on school campuses with their staff. Finally, the District provided e-mails from the Principal to the complainant, dated October X, 2017, and October XX, 2017, in which the Principal notified the complainant of a conversation with the Field Supervisor in response to the situation, assured the complainant that he would have no further issues with his service dog, and thanked the complainant for coming to speak with him.

#### Resolution and Conclusion

In January 2018, OCR contacted the District to discuss the complaint, and the District indicated its interest in voluntary resolution. As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District entered into the attached agreement, signed February 12, 2018, to resolve the complaint. The agreement requires the District to (1) send its service animal policy to OCR for review and approval; (2) publish the policy and disseminate information about it to District staff; (3) arrange for opportunities for discussion of the service animal policy at all District schools known to have staff, students or members of the school community who require the use of a service animal; and (4) send the complainant a letter notifying him that he is welcome to attend District events with

his service dog, providing him with a District contact person, and including a link to the service animal policy, once published. Since the District agreed to voluntarily resolve the complaint, OCR did not complete its investigation or reach conclusions regarding the District's compliance with Section 504 and Title II with respect to this complaint. OCR will monitor the District's implementation of the agreement.

This concludes OCR's investigation of the complaint and 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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently.

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 routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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.

OCR wishes to thank you and your staff, particularly Dane Caldwell-Holden, for your cooperation in resolving this complaint. If you have any questions, please contact the case resolution team.

Sincerely,

/s/

Zachary Pelchat  
Team Leader

cc: Dane Caldwell-Holden, Director, Student Services