



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

November 22, 2019

Sent via electronic mail

Mr. Steve Kennedy  
Superintendent  
Menifee Union School District  
[skennedy@menifeeUSD.org](mailto:skennedy@menifeeUSD.org)

(In reply, please refer to OCR Docket Number 09-19-1563.)

Dear Superintendent Kennedy:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Menifee Union School District (District), received on August 12, 2019. The Complainant alleged that the District discriminated against the student on the basis of disability.<sup>1</sup> Specifically, OCR opened for investigation the following issues:

1. Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to evaluate her in a timely manner even though it had reason to believe that she needed special education or related services because of a disability.
2. Whether the District failed to ensure that the Student could fully participate in all field trips during the 2018-2019 school year due to the Student's disability.
3. Whether the District is discriminating against the Student on the basis of her disability by prohibiting her from bringing her service animal (SA) to school.

OCR is responsible for enforcing 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. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. OCR is also responsible for enforcing 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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public college, the College is subject to Section 504, Title II, and their implementing regulations.

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<sup>1</sup> OCR previously provided the District with the identity of the complainant and student. We are withholding their names from this letter to protect their privacy.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the Complainant and interviewed the Complainant. Based on a review of this information, OCR determined that it is no longer appropriate to accept now-clarified Allegation 1 and Allegation 2 for investigation and is therefore dismissing those allegations. Prior to OCR completing its investigation into Allegation 3 and making a compliance determination, the District expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

Allegation 3: Whether the District is discriminating against the Student on the basis of her disability by prohibiting her from bringing her service animal (SA) to school.

### Legal Standards

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, in providing any aid, benefit or service, may not deny a qualified person with a disability an opportunity to participate, 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.

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 section 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 determine whether an animal qualifies as a service animal to only two: if the animal is required because of a disability and what work or task the animal has been trained to perform. In addition, a public entity shall not require documentation, such as proof that the animal has been certified trained, or licensed.

### Facts Gathered to Date

The Student has Type 1 diabetes.<sup>2</sup> During this school year (2019-2020), she is enrolled in Grade X at a XXXXX school (the School). The Student has a service animal (SA) that she was planning to bring to school starting in Grade X. According to the Complainant, the SA signals when the Student's blood glucose level is high or low. While the Student also uses a XXXXXX<sup>3</sup> to monitor her glucose levels, at times, the SA signals more quickly than the XXXXXX.

On June X, 2019, the Complainant emailed the now former principal at the School that the Student would start to bring the SA with her to school by the 3<sup>rd</sup> week of the 2019-2020 school year. The former principal forwarded the email to the assistant principal, who is still at the School.

On September X, 2019, the School convened a Section 504 meeting at which the SA, among other topics, was discussed. Later in the day after the 504 meeting, the Principal wrote to the Complainant that she didn't send Section 504 paperwork home yet because she was following up on some questions that came up at the meeting regarding the SA. The Section 504 Plan listed that the Student would be bringing an SA and the meeting notes<sup>4</sup> reflect that the Principal asked if the SA "is a medical requirement as mandated by physician's orders" and requested a "medical doctor note/order". It noted that the Complainant's husband explained that the SA may not come to school every day, for example if the SA was ill or the Student had "too much" going on that day. It noted that the Principal responded that if the SA would "be considered an assistive device, then the presence of the service dog would [sic] expected to be daily." Further, the notes reflect that the Principal would follow up with the Complainant "with questions about where at the school can the dog be allowed to attend to its needs, and if/when the service dog can begin transitioning to the campus with [the Student]."

On September XX, 2019, the Principal again emailed the Complainant, writing that she needed clarification as to whether the SA would be at the School and with the Student consistently and constantly, who would care for the SA's "necessities", and whether there was a place at the School for the SA when not with the Student. She also wrote, among other things, that she was concerned that the SA may not be a "medical requirement as mandated by a medical physician" and that the SA "does not serve in a assistive capacity". She wrote that something would have to be "in place at all times" and "provide consistent results" to be considered an "assistive device" and therefore

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<sup>2</sup> The Student also has Celiac disease, however the Complainant raised no concerns relating to this.

<sup>3</sup> XXXXXX is a glucose monitoring device.

<sup>4</sup> The Complainant and the Principal exchanged emails regarding the notes over the course of the following two weeks in which the Complainant reviewed and made additions to the notes.

the SA would have to be with the Student “at all times”. She additionally wrote that if the Complainant were able to obtain a physician’s letter regarding the need for a SA, the letter would need to include information regarding other “assistive technologies” the Student uses to monitor her blood glucose and a prioritization of the “assistive technologies”. The Principal further wrote that the Student would be responsible for “feeding and biological maintenance” of the SA.

Ultimately, on September XX, 2019, the Complainant told the Student to take the SA to school with her, which she did. The Principal then reached out to the Complainant and they had a meeting that morning. The Principal had found a location for the SA to use as a restroom, the indicated that they would cut out some bushes for the SA’s use, and appeared to be fine with crating the SA during times like PE.

Based on the facts gathered to date, OCR identified preliminary compliance concerns regarding the Principal’s communications with the Student and the Complainant surrounding the SA, including the Principal’s request for medical documentation, and whether the communications impermissibly discouraged the Student from bringing the SA to school. In order to complete the investigation and therefore reach a conclusion as to the District’s compliance, OCR would need to conduct an interview with the Principal and possibly other individuals who participated in the Section 504 meeting and review documentation in response to OCR’s data request.

#### Overall Conclusion

This concludes the investigation of this complaint. To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation. The proposed Resolution Agreement provides that the District will conduct training of School administrators regarding the applicable law surrounding service animals.

Based on the commitments made in the enclosed resolution 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 resolution agreement is intended to address the complaint allegation. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

OCR’s determination in this matter should not be interpreted to address the District 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 individual 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 Shana Heller, Attorney, at (415) 486-XXXX or at [Shana.Heller@ed.gov](mailto:Shana.Heller@ed.gov).

Sincerely,

/s/

James Wood  
Team Leader

Lisa Dennis  
Counsel for the District