



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 18, 2020

**VIA ELECTRONIC MAIL**

Mark Campbell  
Superintendent  
Calaveras Unified School District  
3304 B Highway 12  
San Andreas, CA 95249

(In reply, please refer to case no. 09-20-1152)

Dear Superintendent Campbell:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Calaveras Unified School District (District). The complainant<sup>1</sup> alleged that the District discriminated against her daughter (Student) on the basis of disability, specifically:<sup>2</sup>

- 1) The District discriminated against the Student by failing to allow her and her service animal access to a District high school (School).
- 2) The Student and her service animal were subjected to harassment by other students based on disability and the District failed to respond appropriately and effectively to notice of the harassment.
- 3) The District failed to provide the Student with a free appropriate public education (FAPE). Specifically, upon notice of disability-based harassment, the District failed to promptly determine whether the Student's educational needs were still being met to ensure that the Student continued to receive a FAPE.

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 in programs and activities operated 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. §§ 12131-12134, and

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<sup>1</sup> The name of the complainant and the Student were stated in OCR's notification letter in this matter and are not being stated here in the interest of privacy.

<sup>2</sup> OCR's notification letter stated issue #2 as issue #3 and vice-versa, but they have been reordered in this letter for clarity.

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 educational entity, the District is subject to Section 504, Title II, and their implementing regulations.

OCR received information and documentation from the complainant, the Student, and the District and, after reviewing this, concluded that there is sufficient evidence to find a violation for each of the allegations. The facts determined by OCR, legal standards, and the reasons for OCR's determinations are summarized below.

### Facts

At all times pertinent to the complaint, the Student was enrolled in the XXXXXXXX grade at the School and she was eligible for and receiving special education services through an Individualized Education Program (IEP) based on a primary qualifying disability of Specific Learning Disability and a secondary qualifying disability of Other Health Impairment.

On or about July XX, 2019, the Student contacted the School principal to inform him that she desired to bring a service dog with her to the School. The principal referred the Student to the District's Executive Director of Personnel & Operations (ED), and, on July XX, 2019, the Student had a telephone conversation with her about the dog. According to the ED's prepared summary of the conversation, she told the Student that she "would need to do some research. . .to determine procedure. . .[and] talk to our Ed services staff." The Student informed the ED that one of the tasks the dog could perform was related to her potentially passing out. The ED, believing that the Student passing out was potentially a new disability, told the Student that she would have a conversation with the Student's case manager to inform her of a potential new disability so that the Student's IEP adequately addressed all of her disabilities. The Student, however, stated that the ED told her that the dog would need to be a part of her IEP. The ED concluded the conversation by telling the Student that someone from the District would be back in contact with her in a couple of days.

Also, on July XX, 2019, the complainant called the superintendent's office to discuss the service dog issue. She spoke with the administrative assistant in the office and told her that she was receiving conflicting information about what was required to bring the dog to the School. She stated that she was seeking clarity and was attempting to avoid any issues. She left her phone number for the superintendent to return her call.

The assistant notified the superintendent of the complainant's call by email on the same day and the superintendent responded by asking the assistant to call the complainant and tell her that he has no new information to give her and that he is working with the ED who is working with county, District, and School staff to address the issue.

On July XX, 2019, the 2019-20 school year began.

On August X, 2019, a District nurse sent an email message to a District psychologist and the District Educational Services Director (ESD) that informed them that she had completed her interview of the complainant as part of an assessment of the Student. Among the things the nurse reported was that the Student had panic attacks and anxiety and the Student's dog was trained to sense the panic attacks and then react by drawing the Student out of the panic attack. The information further stated that one way the dog performed its task was to lay on the Student's lap when it senses an attack. On the same date, the ESD forwarded the nurse's email to two administrators at the Calaveras County Office of Education [the Special Education Local Plan Area (SELPA)].

On August X, 2019, counsel for the District prepared a letter for the District to send to all parents and staff at the School that informed them that there would be two service dogs on the School campus and inviting them to contact the District if they "suffer from any disabilities (physical or psychological) related to dogs, which would require the District's attention in order to accommodate your needs."

On August X, 2019, the District sent the letter by email to parents and staff at the School and notified counsel that it had done so. In response to the notification, counsel sent a list of questions for the District to ask the complainant about the dog at a meeting that the District had scheduled for August XX, 2019.

On August XX, 2019, the District convened the meeting to discuss the dog issue. Attending the meeting were the Student with her dog, the complainant, the School psychologist, the Student's case manager, the School principal, the SELPA program manager, and the ESD. The District prepared a 3 ¼ page single spaced summary of the meeting that stated at the beginning that the purpose was to have an informal discussion about the request to bring a service dog to the School to support the Student's anxiety. The summary then stated that the following questions were asked or topics discussed at the meeting:

- The ESD asked about the various ways that the dog would be controlled and the complainant and Student explained that the dog has a number of leashes including one that beeps or vibrates if the handler needs to get the dog's attention. District representatives responded that the noise made by the leash cannot be loud so that it disrupts the educational environment. The ESD stated that the dog needs to be controlled by voice commands and that part of the purpose of the meeting was to ensure that the Student is aware of her responsibilities as the handler.
- After the complainant/Student explained how the dog reacts when it detects anxiety in the Student, the ESD asked how compliant the dog is when the Student gives it a command, if there were any instances of aggression by the dog, if the dog has been around large groups of people, and how the dog responds to other animals.
- The ESD asked questions and raised concerns about the dog's presence during physical education class and a floral arranging class and others questioned what would happen with the dog during lunch time.

- The School principal questioned how the dog would act in a tight, confined, and “very busy” classroom and expressed his concerns.
- Those at the meeting also questioned how the dog would react to a physical altercation and asked about the longest period that the dog has been out with the Student. The ESD questioned the dog’s “stamina” and whether it would be able to be in a classroom all day. Others questioned how the dog would be transported to and from the School and one individual questioned how the dog knows when it is working and not working.
- One individual asked what would happen when the dog bites someone and the summary indicates that the Student “demonstrated how she handles [the dog] approaching the public.”
- The ESD questioned how the dog responds when others attempt to interact with it and one individual questioned how the dog would react to rowdy crowds or “people who are physically aggressive.”
- Those present also “discussed reinforcement as an added way to control [the dog],” raised issues with the location at which the dog would relieve itself, and stressed that the Student “cannot be off campus or out of the class unnecessarily.”
- The ESD questioned how frequently the dog performs its services for the Student.

According to the Student, the meeting lasted more than two hours.

On August XX, 2019, counsel for the District sent, by email, to the ESD and the two administrators at the SELPA, a letter created by counsel to provide to the complainant that informed her of the District’s determination about the Student’s dog as a result of the meeting held on August XX. Counsel, however, did not attend the meeting.

On August XX, 2019, the complainant attended a meeting at which the ESD presented her with an August XX, 2019 letter that stated, in pertinent part:

Thank you for meeting with us on XXXXXX, August XX, 2019. Along with review with the CUSD Superintendent. . .we have given great attention to the information you shared with us. It is the District's and the Calaveras County of Education's view that [the dog] does not perform the task you state, that is attending to [the Student's] episodes of anxiety. [The Student] exhibited anxiety in the meeting, but [the dog] was not focused on her needs and did not attend to her by licking her face as you stated she does. Nor is [the dog] in [the Student's] control. This was also evident in our meeting observing multiple times when [the Student] had to redirect [the dog] multiple times [sic]. Moreover, recently, as you shared with us when during the XXX Round Up, [the dog] did not stay with [the Student] when she saw another dog in the area. This is inappropriate for a service animal. It was

clear in our meeting that [the dog] behaves similarly with people,<sup>3</sup> and [the Student's] need for constant redirection evinces lack of control necessary to ensure health and safety.

Except for only slight non-substantive variations in only a few words, the above was verbatim to the language written by counsel for the District in the letter that she sent to the ESD on August XX.

There is scant information found in the District's summary of the meeting that supports the letter's assertion that the Student was not in control of the dog during the meeting. The only information in the summary that could possibly be related to the assertion is a brief notation that states at 4:15 p.m. "[the Student] shared that [the dog] is getting antsy" and another statement two paragraphs later that states "[the complainant] prompted [the Student] – She feels your anxiety, calm down and command her down."

According to an audio recording of the August XX meeting, the ESD stated to the complainant at the time that she gave her the letter that the District was denying the Student's ability to bring the dog to the School "as we don't believe [the dog] is trained as a service dog *to the extent that we need.*" The ESD also stated that the dog was not trained "well enough" and that the District was open to reconsidering its determination if the dog obtained further training to its satisfaction.

On August XX, 2019, the complainant contacted the superintendent's office and informed it of her dissatisfaction with the District's actions and that she believed the actions did not comply with the law.

On August XX, 2019, an IEP team meeting was convened for the Student to discuss possible services and interventions to address her anxiety. After the meeting, the complainant again stated her disagreement with the District's actions and determination about the Student's dog.

On August XX, 2019, the Student and complainant arrived at the School with the dog so that it could accompany the Student during the school day. Rather than initiating a confrontation, the District did not attempt to preclude the dog from being on campus.

During the last class period of the day, the Student's dog snapped at another student as he walked by the dog. The other student wrote a statement of the incident in which he stated, in pertinent part:

. . .it bit my pants and tore it a little it wasn't that much but the dog didn't hurt me and I'm fine and I'm happy that I am fine because it hurts.

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<sup>3</sup> The District's summary does not have any information in it that establishes that the dog behaved in any improper or inappropriate manner with any of the attendees at the meeting or that it was distracted by any of the attendees at the meeting.

Because of the above incident, the complainant informed the School principal that the dog would not return with the Student at that time.

At various times on August XX, the Student and her dog were subjected to numerous comments or actions by other students because of the presence of the dog, including: one student who swore at the Student and vocally expressed his displeasure with the dog being permitted at the School; one student who repeatedly barked at the Student and her dog as they walked by; and, another student who loudly stated that the dog would bite him and expressed his desire not to sit near it. The complainant and Student reported these instances to the School principal and complained that the Student and her dog had been subjected to bullying.

On the afternoon of August XX, 2019, the superintendent sent an email message to members of the District's Board of Trustees that stated, in pertinent part, the following bullet points:

- Parent demanding her daughter be allowed to have a service dog on campus (SPED student but dog not needed for identified disabilities, but for emotional support in moments of anxiety or if/when she loses consciousness they claim the dog senses it and licks her face to assist her).
- We have been cautious (working with legal counsel to give direction, trying to not allow this based on precedent and possible fallout from other students/parents regarding a dog on campus but wanting to be clear on what we can and can't do and defend).
- Doubts from staff as to the validity of the need for the dog, based upon observations, but we can't ask for medical diagnosis of student (against the law), can only ask if dog is certified (immunizations, etc)...it is really restrictive what we can/can't ask for.

Also on the afternoon of August XX, 2019, in response to a request from a local newspaper, the superintendent sent an email message to one of its reporters that stated, in pertinent part:

The request to have a service dog on campus was made and we are working with the parent, student, staff and legal counsel to best determine how to proceed.

\* \* \* \* \*

My understanding is all that we can inquire about, with the service dog, is that they are up to date with immunizations (if there is more, I can let you know). . .but I understand we are limited in what we can require, by law.

\* \* \* \* \*

We continue to work with all involved to balance the rights of all students, the needs of all students, the liability involved in both scenarios (allowing access, denying access), the legal defensibility of both scenarios, the

potential risk factors and precedents set with both scenarios. . .so we can make thoughtful and defensible decisions moving forward.

Because of the Student's experience with the other students at the School, on August XX, 2019, she and the complainant determined that it was not a safe environment to which she could return and the Student enrolled in an independent study program in the District.

In a September X, 2019 email message to the ESD, a school nurse wrote that the complainant refused to bring the Student to the School for a screening because of the bullying of the Student that had occurred. On the same date, the ESD forwarded the email message to the School principal and inquired of him if he had finished his investigation of the Student's bullying complaint because it would "need to be addressed in this IEP tomorrow or at least by the time we finish with [a psychologist's] reporting later in the month."

The District sent to OCR a one-page typewritten summary of the principal's investigation of the Student's bullying complaint. It reflects that the principal investigated the actions of the three students who were alleged to have harassed the Student or her dog and that he ultimately concluded that no harassment had taken place since the other students' actions were done because of their fear of the Student's dog or because of "foolishness." The summary concludes by stating that the principal discussed his investigation with the complainant and the Student and that he "shared with them I do not consider these students to have bullied [the Student] or her dog." The summary does not give any date for when the principal began his investigation, interviewed the other students, finished his investigation, had his discussion with the complainant and the Student, or prepared his summary.

The entirety of the information stating and describing the students' actions that is stated in the summary is:

Student 1: As I walked [the Student] to her first period class, a student used profanity and voiced his displeasure about [the dog] being allowed on campus. I met with this student to redirect his language and questioned him about his response to seeing the dog. He stated he was upset because he was attacked by a dog as a child and feared it would possibly bite him or some else [sic]. He shared he had heard [the dog] was [the Student's] pet and at some point in the past had in fact bit a person.

Student 2: This student admitted to me he barked at [the dog] as [the Student] and he walked past him. I asked him if this behavior is warranted at XXX. He stated no and apologized for his poor behavior.

Student 3: He witnessed [the dog] attack the student during class and was frightened by the attack. He stated he told [the Student] he did not want to sit by the dog. He stated he did not yell at her.

OCR requested additional information from the District to clarify and further explain some of the information in the summary. In response to OCR's request, the District stated that the investigation began on August XX and concluded on August XX, 2019, the principal obtained written statements from each of the three students, and that there was no additional documentation associated with the investigation. The District clarified that the principal did not meet with the complainant and the Student to discuss his investigation and explain his determinations but, instead, phoned the complainant "sometime during the first week of September 2019" but the principal does not remember the precise date and time of the call. The District also stated that the principal made notes of his phone conversation with the complainant and entered them into the District's student information system. The District has not been able to find the entry in the system and could not explain to OCR why it is not there. The District also told OCR that the principal prepared and signed his summary on September X, 2019 and that neither it nor any other written summary of or response to the complaint was given to the complainant or Student.

The District also told OCR that it included two of the three student statements with its response and that the third statement could not be located. OCR notes that only one statement was from a student about whom the complainant and Student complained. The other statement was written by the student at whom the dog had snapped when it was in the classroom. This student was not one of the students about whom the complaint was made.

Both the Student and complainant informed OCR that the principal did not inform them of the summary of his investigation or the findings that he made and the complainant expressly denied that the principal ever called her to tell her about his investigation findings.

On September X, 2019, an IEP team meeting was held for the Student. The notes from the meeting indicate that the team discussed the Student's current placement at the independent study program and the success that she was having there. They also state that the complainant expressed her desire for the Student to graduate with the rest of her class at the previous School. The notes do not reference the harassment or bullying of the Student that was alleged on August XX, 2019. The notes state that the team agreed to continue the meeting to September XX, 2019.

On September XX, 2019, the IEP team meeting was reconvened. The notes reflect that the team primarily discussed the Student's experience at the independent study program and recommended supports for her. There is no mention of any possible harassment of the Student that may have occurred when she was with her dog on August XX, 2019.

On December XX, 2019, the complainant filed this complaint with OCR.

On January XX, 2020, the IEP team met again and discussed the Student's current placement in the independent study program. The notes from the meeting state that the Student expressed that she did not desire to return to her old School and was working to



achieve an early graduation. There is nothing in the notes related to the August XX, 2019 incidents or potential harassment of the Student.

*The District's Service Animal Policy*

When this complaint was filed with OCR, the District did not have a service animal policy that would have provided a process to follow in addressing the Student's use of a service dog. During OCR's investigation, on March 10, 2020, the District adopted and implemented a service animal policy, AR 6163.2(a), along with a nonservice animal policy, AR 6163.2(c).

The service animal policy has the following pertinent provisions:

SERVICE ANIMAL DEFINED

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3. A service animal must be "required" for the individual with a disability and the service animal must be "individually trained" to do work or a task for the individual with a disability. These tasks may include, but not be limited to, guiding an individual with a disability, alerting individuals with impaired hearing, pulling a wheelchair, or fetching dropped items. The task performed by the service animal must be directly related to the functional limitation of the individual's disability. Service animals are working animals and are not pets.

4. If it is obvious what service the animal provides to the individual with a disability, then staff should not make any further inquiries regarding the tasks performed by the service animal (i.e. a guide dog for an individual with impaired vision). Only limited inquiries are allowed by District staff to determine if a dog is a service animal when it is not obvious what service the dog provides and staff may ask only the following two questions:

- a. Is the service animal required because of a disability?
- b. What work or task has the service animal been trained to perform?

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SERVICE ANIMAL REQUESTS ON BEHALF OF A STUDENT

All requests for a student to bring a service animal to a school property and/or facility and/or school function must be made in writing, 10(ten) school days prior to the date the student plans to bring the service animal, to the school principal who shall submit a copy to CUSD Educational Services Department.

The Superintendent or designee shall, in accordance with this policy, confirm that the animal is a service animal and shall provide the student's

parents with a copy of this policy and require the student's parent(s) to acknowledge in writing that the parent(s) has received a copy of the policy, the parent(s) understands the contents of the policy, and the parent(s) agrees to comply with the policy. As part of the approval process, the student's parent(s) must provide proof that the service animal has received all required vaccinations.

The Superintendent or designee shall review and approve or deny requests to bring a service animal to school property and/or facility and/or school function on a case-by-case basis.

The Superintendent or designee shall give such permission to bring a service animal to school property and/or facility and/or school function only after he/she has provided written notification to all parents/guardians of students in the affected class(es) and staff in the affected class(es), asking them to verify whether their child or if they have any known allergies, asthma, or other health condition that may be aggravated by the service animal's presence. When an individual has provided notification that his/her child or the staff member has provided notification that he/she has an allergy, asthma, or other health condition that may be aggravated by the service animal, the Superintendent or designee shall take appropriate measures to protect the student or staff member from exposure to the service animal. Allergies and fear of dogs are not valid reasons for denying access or refusing service to individuals using service animals. When an individual whose health is aggravated by the service animal's presence and an individual who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a school cafeteria, both individuals should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

*Issue # 1: The District discriminated against the Student by failing to allow her and her service animal access to the School.*

### Legal Standards

Under the Section 504 regulations<sup>4</sup> and the Title II regulations,<sup>5</sup> a school district in providing any aid, benefit or service, may not: deny a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the 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.

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<sup>4</sup> 34 C.F.R. § 104.4(b)(1)(i), (ii) and (iii)

<sup>5</sup> 28 C.F.R. § 35.130(b)(1)(i), (ii) and (iii)

In addition, the Title II regulations<sup>6</sup> require a public school district to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the it can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Whether 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 an individual with a disability would result in additional cost does not of itself constitute an undue burden on the program.

The Title II regulations<sup>7</sup> 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 or miniature horse. The service animal 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<sup>8</sup> 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), service animal users have the right to go anywhere with their service animal that any individual without a disability is permitted to go.

The Title II regulations<sup>9</sup> 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: (1) if the animal is 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.

A qualified individual's right to use a service animal in a public entity's programs and activities is reasonable as a matter of law and the permissible reasons for excluding a service animal are limited to five: (1) the animal is out of control and the animal's handler does not take effective action to control it;<sup>10</sup> (2) the animal is not housebroken;<sup>11</sup> (3) the

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<sup>6</sup> 28 C.F.R. § 35.130(b)(7)

<sup>7</sup> 28 C.F.R. §§ 35.104 & 35.136

<sup>8</sup> 28 C.F.R. § 35.136(a)

<sup>9</sup> 28 C.F.R. § 35.136(f)

<sup>10</sup> 28 C.F.R. § 35.136(b)(1)

<sup>11</sup> 28 C.F.R. § 35.136(b)(2)

animal would constitute a fundamental alteration to a program or activity;<sup>12</sup> (4) the animal would create a direct threat;<sup>13</sup> or, (5) the animal would impose an undue burden.<sup>14</sup>

In the context of elementary and secondary schools, the right of a student with a disability to use a service animal is independent of the student's ability to receive a free appropriate public education (FAPE) and the determination of whether an animal 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.

Under the Title II regulations,<sup>15</sup> 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.

In those situations where a school district has reached a determination that an animal 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 animal to school as a reasonable modification or accommodation.

### Analysis & Conclusions

As stated above, the regulations implementing Title II provide that the right of an individual with a disability to use a service animal in the programs and activities of a public school district is reasonable as a matter of law and the circumstances under which an individual's service animal may be excluded are limited. The regulations also impose limitations on the type and amount of information that a school district may seek from an individual with a disability when verifying that an animal used by the individual is a service animal. The regulations are intended to provide the broadest access possible to those individuals using service animals in the programs and activities of school districts.

As an initial and important issue in this matter, it was apparent from the District's communications and actions that it incorrectly believed that the Student was required to **request** the District's approval and authorization to use a service dog at the School.<sup>16</sup> Individuals with disabilities, however, are not required to make a request of anyone for the ability to use their service dog in a public entity's programs or activities. The

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<sup>12</sup> 28 C.F.R. § 35.130(b)(7)

<sup>13</sup> 28 C.F.R. § 35.139

<sup>14</sup> 28 C.F.R. § 35.150(a)(3)

<sup>15</sup> 28 C.F.R. § 35.136(c)

<sup>16</sup> This is further evident in the District's recently implemented service animal policy, which consistently characterizes any individual's stated intent to use a service dog as a request to use a service dog.

regulations grant them that ability as a matter of law and it is not subject to the approval of, or dependent on, obtaining the consent/authorization from someone at the public entity. By framing the issue as a request by an individual with a disability, a public entity improperly imposes a burden on the individual with a disability to seek approval from the public entity for the individual's use of a service animal as though the use was not authorized and somehow the individual must justify his or her use of it to the public entity. Such a position is contrary to the intent and purpose of the service animal regulations to provide the broadest possible access to service animal users while, at the same time, ensuring that they are burdened in the least manner possible.<sup>17</sup>

Upon receiving notification from the Student that she intended to use her dog at her School in the upcoming school year, the only response from the District that was permissible was one verifying the nature of the dog as a service animal by inquiring of the Student whether the dog was required because of a disability and what work or task the dog was trained to perform. Once the District obtained suitable responses to these two inquiries, that should have been the end of any inquiry by it. It could not thereafter request additional information or documentation from the complainant or Student, require documentation of the dog's status or abilities, subject the Student and her dog to a period of observation to see how the Student controlled the dog, or attempt to verify that the dog could adequately perform the work or tasks it was trained to perform.

The District obtained satisfactory responses to the two inquiries on August X, 2019 when a District nurse was told by the complainant that the dog was trained to react to the Student's anxiety/panic attacks by drawing her out of the attacks. The nurse informed a District administrator of this information by email and the administrator thereafter even informed two administrators at the SELPA of the information. At this point, the status of the Student's dog as a service animal was established and the District should not have further subjected the Student or complainant to additional inquiries or request of them that they provide additional information.

The District's process that included having the Student and complainant (and dog) attend a meeting on August XX, 2019 to address inquiries about the dog's training, the Student's control over the dog, the dog's stamina, any bad actions by the dog, and other general questions about the dog was impermissible.

Although the District characterized the meeting as an opportunity to explore the Student's "request" and "better learn how [it] can be supportive to [the Student's] needs," the manner in which the meeting was conducted, the questions that were asked and the issues that were raised at it, and the content of the District's August XX letter indicate that the intent of the August XX meeting was to pose impermissible inquiries about the dog and possibly to have an observation period of the Student and her dog. These types of actions by the District are prohibited by the explicit language of the regulations.

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<sup>17</sup> The regulations permit a public entity to make the two inquiries of the individual. However, those two limited inquiries do not transform the individual's ability and right to use a service animal into a request to use a service animal. They serve as threshold inquiries that may be asked to determine the nature of the animal and whether it is a service dog.

Additionally, the August XX letter denying the Student the ability to bring the dog to School addresses perceptions about the dog based on the August XX meeting and makes no reference to the requirements and standards of the law with regard to service animals. First, the letter is completely silent about the two inquiries permitted by the regulations and the response, if any, that was provided to them by the complainant or the Student. Second, the letter makes no reference or citation to any one of the five permissible means of excluding the dog. There is no mention of whether it is or is not housebroken, it was “out of control” and the Student failed to take “effective action to control it,”<sup>18</sup> it would constitute a fundamental alteration of a District program, service, or activity, it was an undue financial or administrative burden, or it created a direct threat to the health and safety of others.

The communications in this matter indicate that the District did not understand the standards applicable to the use of service animals and that it incorrectly relegated the Student’s right and ability to use a service dog to the interests of others or its own interests. Some of the communications include: the email message notifying parents and staff of the use of the dog prior to providing access to the Student and her dog; the ESD’s statement to the complainant that the dog was not trained to the *extent that the District needed*; the superintendent’s email message to members of the District’s Board of Trustees in which it was stated the District was “trying not to allow this;” and, the superintendent’s email message to the reporter that stated the Student’s right to use a service animal was being balanced or weighed against the interests of other students and the District’s potential liability.<sup>19</sup>

The issues identified above may have been avoided if the District had a compliant service animal policy that it could have used to guide it in addressing the Student’s use of the dog at the School. As previously noted, however, the District did not implement a service animal policy until after OCR began its investigation. The implemented policy, however, has provisions that do not comply with the Title II regulations, including:

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<sup>18</sup> The District’s letter does not articulate the correct standard when it states that its conclusions about and objections to the dog were based on it “observing multiple times when [the Student] had to redirect [the dog].” There is nothing impermissible or improper about the Student redirecting the dog. The regulations do not require perfect behavior by a service animal and they recognize that there will be occasions that a dog, by its very nature, may momentarily not be under the control of its handler. Thus, the regulations provide for the second and equally important requirement – that the handler bring the dog back under control when these instances occur.

Moreover, even assuming redirection of the Student’s dog was a proper concern or issue, it fails to rise to the level required by the regulations – that the dog is **out of control** (and the handler failed to take effective action to control it). Nothing found in the District’s summary of the meeting or in its August XX letter remotely approaches a situation where the Student’s dog was out of control and she failed to take effective action to control it.

<sup>19</sup> Because it is unnecessary for purposes of OCR’s investigation and findings in this matter, it does not make a determination whether the Student’s dog should or should not have been considered a service animal and it does not address the actions of the dog that occurred in the last class period of the day it was at the School.

- Paragraph #3 under the heading “Service Animal Defined” states a definition of service animal that is more restrictive and limiting than that provided for in the Title II regulations by its use of the phrases “A service animal must be ‘required’ for the individual with a disability” and “[t]he task performed by the service animal must be directly related to the functional limitation of the individual’s disability.” The regulations state that a service animal performs work or tasks for the benefit of an individual with a disability and there is no requirement in the regulations that the service animal is required for the individual. A service animal can perform for the benefit of an individual with a disability without also being required for the individual. The regulations also state that the tasks or work performed be directly related to the individual’s disability and not the functional limitation of the disability. Inserting a functional limitation to modify the disability narrows the definition of service animal and impermissibly limits its application.
- The entirety of the policy titled “Service Animal Requests on Behalf of a Student” is improper and not in compliance with the regulations. First, it is not correct to characterize the use of a service animal as a “request” and a service animal user is permitted to the use of it without submitting a request seeking authorization. Next, the requirement to submit a request to the school principal at least 10 days prior to the anticipated use is not permitted. The section related to the parents signing a statement agreeing to the terms of the District’s policy is impermissible and imposes a burden and prerequisite on the use of a service animal that is not authorized by the regulations. Also, conditioning the use of a service animal on first providing notification of the use to all parents and staff is an extra prerequisite not authorized by the regulations and has a potential chilling effect on an individual’s desire to use a service animal.

Based on the above, OCR has determined that there is sufficient information to support a finding of noncompliance for the first Issue in this matter.

*Issue #2: The Student and her service animal were subjected to harassment by other students based on disability and the District failed to respond appropriately and effectively to notice of the harassment.*

### Legal Standards

The regulations implementing Section 504 prohibit discrimination based on disability by recipients of federal financial assistance. The Title II regulations<sup>20</sup> create the same prohibition against disability-based discrimination by public entities. A public school district that receives federal funds is responsible under Section 504, Title II, and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student’s ability to participate in or receive education benefits, services, or opportunities.

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<sup>20</sup> 28 C.F.R. § 35.130(a) and (b)

Under Section 504, Title II, and the regulations, once a school district has notice of possible disability-based harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A district may violate Section 504, Title II and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and, (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

OCR evaluates the appropriateness of the responsive action by examining its reasonableness, timeliness, and effectiveness. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment from recurring, eliminate the hostile environment, and, as appropriate, remedy the effects of the harassment.

### Analysis and Conclusions

In this matter, OCR determined that the Student was subjected to actions or comments by three different students in less than one day that targeted her because of her use of her dog for disability-related purposes. The Student found the three students' actions so distressing and concerning that she refused to return to the School and instead enrolled in an independent study program. This raises the presumption that the other students' actions may have constituted conduct that was sufficiently serious to deny the Student the ability to continue to participate in or benefit from the education program at the School. The District was made aware of this conduct when it was reported to the School's principal by the complainant. Thus, it must be determined whether the District took appropriate responsive action. For the reasons explained below, OCR has concluded that it did not.

As an initial matter, although the principal's investigation of the allegations was a proper beginning response, the investigation was inadequate as the documentation and other information about the investigation reveal that the principal never interviewed the Student or otherwise obtained information from her about the nature of the incidents that the complainant asserted constituted harassment and the impact they had on her. The failure of the investigation to obtain this first-hand information from the individual at whom the harassment was directed is a deficiency in the investigation and undermines the conclusions that may have been made because of it.

Additionally, the District does not have documentation of significant elements of its investigation. For instance, the District only produced one of three written statements made by the other students. Also, the District has no record of the principal's asserted conversation with the complainant during which the principal informed the complainant about his investigation and the determinations that he made after it or any record of when the conversation took place. Both the complainant and Student deny that they had any



conversation with the principal about his investigation and the determinations that he made.

OCR has determined that the complainant and Student's representation that neither of them had any conversation with the principal is credible and the District's representation(s) is not credible. The determination is primarily supported by the fact that the District has presented to OCR two different and conflicting representations of the nature and method of the asserted conversation and also because it was unable to produce any documentation of either of the conflicting representations (whether it be the meeting with the complainant and the Student or the phone conversation with just the complainant). OCR's credibility determination was additionally based on the fact that the District represented to OCR that the principal took notes of his phone conversation with the complainant and included an entry summarizing the call in its system, but the District could not find any such entry in the system. Also, with respect to the principal's summary that stated he had a conversation with both the complainant and the Student, OCR finds that this is unlikely given that the principal's opportunity to meet with the Student and have a discussion with her was essentially eliminated on August XX, 2019 as that is the date that she enrolled in the independent study course and never went back to the School or the principal's office there.

Further, based on its own admission, the District told OCR that while the principal prepared and signed his summary on September X, 2019, neither it nor any other written summary of or response to the complaint was given to the complainant or Student.

Based on the above, OCR has determined that there is sufficient information to support a finding of noncompliance with respect to Issue #2.

*Issue #3: The District failed to provide the Student with a free appropriate public education (FAPE). Specifically, upon notice of disability-based harassment, the District failed to promptly determine whether the Student's educational needs were still being met to ensure that the Student continued to receive a FAPE.*

### Legal Standards

The Section 504 regulations<sup>21</sup> require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. Under Section 504, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP or Section 504 team of a student with a disability to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving a FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior.

If the school suspects the student's needs have changed, the IEP or Section 504 team must determine the extent to which additional or different services are needed, ensure

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<sup>21</sup> 34 C.F.R. § 104.33

that any needed changes are made promptly, and safeguard against putting the burden on the student with the disability to avoid or handle the bullying. In addition, when considering a change of placement, schools must continue to ensure that Section 504 services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

### Analysis and Conclusions

Much of OCR's determination for this Issue is based on the same facts and analysis previously stated above for Issue #2. Fundamental to the Student's IEP team being able to adequately consider whether her ability to receive a FAPE had been adversely impacted by the actions of the other students is a requirement that the IEP team have a full and knowing understanding of the other students' actions and the impact of them on the Student. As reflected by the ESD's September X, 2019 email message to the principal, it was the principal's investigation that the IEP team intended to rely upon to determine this issue. However, as indicated above, the investigation performed was inadequate and had no information at all about the impact of the other students' actions on the Student.<sup>22</sup>

OCR's review of the notes from the Student's IEP team meetings that occurred subsequent to the actions by the three other students did not reveal any reference to the actions or any effort to undertake any investigation to understand the nature, severity, and impact of them. The absence of such an entry in the notes of the team meetings leads to the determination that the IEP team never gained full knowledge of the actions and their impact and was unable to properly consider any issues related to the Student's continued receipt of a FAPE as a result of the actions.

As such, OCR has concluded that there is sufficient information to support a determination of noncompliance with respect to Issue #3 in this matter.

On November 18, 2020, the District signed the enclosed resolution agreement to remedy the areas of noncompliance, as described above. Based on the commitments made in the 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 allegations. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of it. Upon completion of the obligations under the resolution agreement, OCR will close the case.

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.

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<sup>22</sup> Moreover, even if the investigation was adequate, OCR was unable to find any reference to it in any of the notes for the IEP team meetings that occurred subsequent to the conclusion of the investigation which indicates that the team never reviewed or considered the investigation and its conclusions.

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.

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 a 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 law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your and your staff's assistance, particularly Amy Hasselwander, Director of Educational Services, and Aimee Perry, counsel for the District, with this matter. If you have any questions about this letter or the resolution of this matter, please contact Alan Konig, Civil Rights Attorney, at (415) 486-XXXX or [Alan.Konig@ed.gov](mailto:Alan.Konig@ed.gov).

Sincerely,

/s/

Naghmeh Ordikhani  
Team Leader

encl.

cc: Amy Hasselwander, Director of Educational Services  
Aimee Perry, Esq., Counsel for the District