



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

September 14, 2020

Via Electronic Mail

Raul Rodriguez, Ph.D.
Superintendent/President
Hartnell College
411 Central Avenue
Salinas, CA 93901

(In reply, please refer to case no. 09-20-2066)

Dear President Rodriguez:

On December 13, 2019, the U.S. Department of Education, Office for Civil Rights (OCR) notified you that OCR received a complaint against Hartnell College (College).¹ Specifically, the complaint alleged that the College's service animal policy (Policy) is not in compliance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

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 its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The College is a public entity that receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations.

After a careful review of the information gathered in this investigation, OCR has determined that the College's Policy is out of compliance with Title II, Section 504, and their implementing regulations. As such, in accordance with Section 303(b) of OCR's Case Processing Manual (CPM),² the College entered into a resolution agreement with OCR that will resolve the areas

¹ The College is the only college within the Hartnell Community College District (District). The District was OCR's main point of contact throughout the investigation.

² The CPM (dated Aug. 26, 2020) can be found here: www.ed.gov/ocr/docs/ocrcpm.pdf.

of non-compliance and other compliance concerns identified by OCR with respect to this Policy. The applicable legal standards, factual findings, and resolution of this matter are summarized below.

ISSUE: Whether the College’s current Policy is in compliance with Title II and Section 504.

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), a college, 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.

In addition, the Title II regulations, at 28 C.F.R. § 35.130(b)(7), require a 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 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, at 28 C.F.R. §§ 35.104 and 35.136, 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 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), 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, 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: (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.

FACTUAL FINDINGS

This OCR complaint alleges that the College's new Administrative Policy 3440 (Policy) discriminates on the basis of disability because it requires owners of service animals to: (i) register a service animal with the Department of Supportive Programs and Services (DSPS); (ii) obtain a photographic identification (photo ID) for the service animal; (iii) ensure the photo ID is visible on the service animal at all times; and (iv) ensure the service animal completes obedience training.

In response to this OCR complaint, the District provided OCR with a copy of its current Policy, which went into effect in August 2019. The District also provided OCR with its service animal policy that was in effect prior to August 2019 (Previous Policy).

Service Animal Policy

The District's current Policy provides a detailed description of the permitted and prohibited use of service animals in the College's programs and activities. Below, OCR has included a few of the Policy's noteworthy provisions.

For example, Paragraph 6 of the District's Policy states that "there is a distinction between an animal that is trained or in training to provide a specific task that is directly related to the disability, *and a service animal that exhibits behaviors reflective to have obedience training.*" (*Emphasis added.*) Further, the Policy states that "[a]ll service animals that are in District facilities, campuses, or programs must have completed obedience training."

Paragraph 15 of the Policy also states, in part, that students "will be provided access to a District certificate for the service animal, which includes a photo ID, to be attached to the collar/harness of the service animal, that must be *visible at all times* on the animal, while present or participating in District facilities, campuses, and programs." (*Emphasis added.*) This paragraph also says that students in need of a service animal shall schedule an appointment with a DSPS Counselor for registration and record collections, prior to the start of classes, programs, and activities.

Lastly, Paragraph 17 of the Policy requires that District staff report to DSPS students with service animals that do not have a visible District photo ID. It also indicates that DSPS is the representative department responsible for collecting licensure and vaccination records.

Documents Referencing the Policy

In addition to the Policy, the District provided OCR with its 2018-2019 and its 2019-2020 DSPS Handbook and Student Catalog. While the 2018-2019 DSPS Handbook attached the District's Previous Policy to it, the District's current DSPS Handbook does not include the current Policy.

With respect to its Student Catalogs, the District's 2018-2019 Student Catalog referenced the Previous Policy as follows:

No Personal Pets or animals are allowed on any College campus except for: 1. Professional service animals for persons with a verified disability. Students requesting emotional support animals as an accommodation must apply through [DSPS]. 2. Animals used in an instructional program. Students not observing this regulation will be in violation of the Student Code of conduct and will be handled through established student disciplinary policy and procedures.

The 2019-2020 Student Catalog references the current Policy as follows:

No personal Pets or animals are allowed on any College campus except for: 1. Service animals that provide a specific task that is directly related to a student's disability. Prior to bringing a service animal to the District, students with disabilities who use a service animal should contact the [DSPS]. DSPS counselors assist students with disabilities to promote a smooth and participation in the College's programs and activities. 2. Animals used in an instructional program. *Students not observing this regulation will be in violation of the Student Code of conduct and will be handled through established student disciplinary policy and procedures. (Emphasis added.)*

ANALYSIS

Under Section 504, colleges 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 colleges permit the use of service animals by individuals with disabilities. The regulations permit colleges 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 college shall not require documentation, such as proof that the animal has been certified, trained,

or licensed as a service animal. Also, a college cannot ask or require an individual with a disability to comply with other requirements generally not applicable to people without pets.³

The regulations permit colleges to exclude any animal in limited circumstances: if the animal is out of control and the animal's handler does not take effective action to control it, or if the animal is not housebroken.

Policy

After a careful review of the District's Policy, OCR has determined that the Policy as written does not meet the requirements of Section 504, Title II, and their implementing regulations. The Policy places requirements on owners of service animals that are not permitted under the law, and places an additional burden on access to the District for individuals with disabilities that is not placed on those without disabilities.

For example, OCR found that Policy Paragraph 6 (among other paragraphs) requires students with disabilities to procure obedience training for their service animal – this requirement is not in compliance with the regulations, as the College is only permitted to ask what work or task the animal has been trained to perform. As such, individuals with disabilities cannot be required to obtain obedience training for their service animals or asked about the specific training that the service animal received. Paragraph 6 also indicates that the service animals should “exhibit... behaviors reflective of having obedience training.” This sentence suggests that District staff could perhaps make inquiries of individuals with service animals, if they believe that the service animal is not exhibiting obedient behavior, about whether their service animals have received obedience training. Any such inquiries would go beyond the two permissible inquiries relating to: (i) whether the service animal is required because of a disability, and (ii) what work or task the service animal is trained to perform. If a service animal is “not exhibiting behaviors reflective of having obedience training,” the District may not require documentation, such as proof that a service animal is trained.

OCR also found that Policy Paragraph 15 is not in compliance with applicable law because it requires service animals to have a collar/harness with a photo ID that is visible at all times while they are present or participating in District facilities, campuses and program. Policy Paragraph 17 also requires that District staff report to DSPS any students with service animals that do not have a visible District photo ID. Both of these Paragraphs are contrary to Title II's intent to provide a service animal user the broadest access possible to College's programs and activities, as it does not give that individual the right to go anywhere with their service animal (unless it is wearing a photo ID) that any individual without a disability is permitted to go.

³ 28 C.F.R. § 35.136(h)

Policy Paragraph 15 also states that students “in need of a service animal shall schedule an appointment with” a DSPS Counselor for registration and record collections, prior to the start of classes, programs and activities. Similarly, Paragraph 17 states that DSPS is the representative department responsible for collecting licensure and vaccination records. These provisions do not comport with the regulations, as the District may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, or registration.

The College’s Current Student Catalog and DSPS Handbook

With respect to the College’s Student 2019-2020 Catalog and DSPS Handbook, OCR notes that it did not review these documents in their entirety; instead, OCR examined both documents as they related to or referenced the use of a service animal in the College’s programs and services.

OCR found that the College’s 2019-2020 Catalog is in violation of the laws that OCR enforces. Specifically, the Catalog states that students with disabilities who use service animals will be in violation of the District’s Student Code of Conduct and will be handled through established disciplinary policy and procedures if they do not contact DSPS prior to bringing a service animal onto the College’s campus. This language is out of compliance with Title II and Section 504 because it restricts students with disabilities from having the broadest access possible to College’s programs and activities. Not only does this provision have a chilling effect on potential applicants and students with disabilities who need service animals in their engagement and participation in the College’s programs and activities, but it also restricts that individual’s right to go anywhere with their service animal that any individual without a disability is permitted to go (as individuals without disabilities may visit the campus without first contacting DSPS).

OCR also notes that the 2019-2020 DSPS Handbook does not reference the Policy, although the Policy references the Handbook. OCR finds this concerning, particularly since students with disabilities who use service animals would likely be inclined to reach out to DSPS or reference its Handbook for support but would not be provided with any such information.

To address the areas of non-compliance and compliance concerns in its current Policy and its accompanying documents (Catalog and Handbook), District has entered into the enclosed Resolution Agreement on September 10, 2020 in accordance with CPM Section 303(b). The Agreement requires the District to: (i) revise its Policy pursuant to Title II and Section 504; (ii) revise the District’s current Student Catalog and DSPS Handbook to reflect the revised Policy; and (iii) provide training to College administrators and DSPS on the revised Policy and on the District’s obligations under Title II and Section 504 with respect to service animals.

CONCLUSION

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 the complaint allegations. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College's and 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 College and 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, we 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 cooperation during this investigation. We thank Dr. Jalomo for his assistance in making this resolution possible. If you have any questions, please contact Genevie Gallegos, Civil Rights Attorney at 415-486-XXXX or genevie.gallegos@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

cc: Romero Jalomo, Ph.D.
Vice President of Student Affairs