



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

April 14, 2023

VIA ELECTRONIC MAIL

Ward H. Andrus, Ed.D.  
Superintendent  
Murrieta Valley Unified School District  
41870 McAlby Ct.  
Murrieta, CA 92562-7021

(In reply, please refer to case no. 09-22-1650)

Dear Dr. Andrus:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Murrieta Valley Unified School District (District). The complainant alleged that the District discriminated on the basis of disability when, on September XX, 2022, the complainant attended the XXX-redacted content-XXX held at XXXXXXXX XXX XXXXX School (School) and a District custodian and the director of XXXXXXXXX X required her to leave the event because she used a service animal.<sup>1</sup>

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving 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 District is a public entity that receives funds from the Department and is, therefore, subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR considered information and documentation submitted by the complainant and the District. Prior to OCR completing its investigation 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 OCR's determinations are summarized below.

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<sup>1</sup> OCR stated the name of the complainant in its notification letter to the District and is not restating it here in the interests of privacy.

## Facts

The District maintains a policy, Administrative Regulation 6163.2(b), titled “Animals in School,” that explicitly recognizes the ability of an individual with a disability to bring and use a service animal “on school premises and on school transportation.”

On June X, 2022, the District entered into an agreement with XXX-redacted content-XXX that permitted the group to use the School to stage its XXX-redacted content-XXX on September XX, 2022. The agreement permitted XXXXXXXX X to use the School’s gym for the day and allowed for a maximum attendance of 1,500 at the event. The agreement also required that XXXXXXXX X have a District custodian at the event.<sup>2</sup>

The complainant, an individual with a disability who uses a psychiatric service dog to assist her, arrived at the XXXXXXXX X event on the morning of September XX to watch the competition. The complainant found a seat in the bleachers and watched the event for several hours with her service dog laying in between her legs in front of her. In the afternoon, near the end of the event, a District custodian approached the complainant while she was sitting in the bleachers and told her that dogs were not permitted at the School and she would have to remove the dog. The complainant explained to the custodian that the dog was her service animal and she attempted to show him a letter indicating that the dog was a psychiatric service dog. The custodian, however, refused to read the letter and continued to tell the complainant to take the dog out of the building. The complainant continued to inform the custodian that the dog was permitted to be with her in the building pursuant to federal law and she told him that she had been there with her dog for more than five hours without any issues or problems.

Despite the complainant advising the custodian that the dog was a service dog and permitted to be there with her, the custodian did not change his position and told the complainant that he would have someone else speak with her. The custodian then left the area and, a short time later, an individual who identified herself as the director of the XXXXXXXX X event came to speak with the complainant. She told her that the custodian threatened to shut down the event unless the complainant removed the dog from the event. The complainant again explained that the dog was a service dog and informed her that she was permitted to have the dog with her pursuant to federal law. The complainant also asked to speak with someone who supervised the custodian as she believed she would have better communication with the supervising individual.

After a few minutes, two other individuals who were associated with XXXXXXXX X also spoke with the complainant about the dog and having it removed and one of the individuals stated that the custodian had called the police because of the complainant’s use of the dog. In order to avoid having an encounter with the police and further increasing her anxiety over the situation, the complainant left the event as directed by the custodian.

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<sup>2</sup> OCR reviewed the District’s agreement with XXXXXXXX X and noted that, although it did not have an explicit reference to any disability laws or civil rights laws, it did have a provision requiring XXXXXXXX X to follow and comply with federal law.

The District explained to OCR that the custodian's actions were the result of his misunderstanding of the District's policies related to animals on its campuses. According to the District, the custodian's belief that the complainant could not have the dog at the event was based on the custodian's reliance on signs posted around the School's campus that explicitly stated, in pertinent part:

**Sign One**

ACTIVITIES PROHIBITED ON SCHOOL GROUNDS  
THE FOLLOWING ACTIVITIES ARE PROHIBITED ON SCHOOL  
GROUNDS EXCEPT AS AUTHORIZED REGULATED OR DIRECTED BY  
AUTHORIZED SCHOOL ADMINISTRATOR  
\*\*\*\*\*  
9. BRINGING OR ALLOWING ANIMALS ON CAMPUS  
\*\*\*\*\*  
PERSONS VIOLATING THE SPIRIT OR THE LETTER OF THIS POLICY  
SHALL BE REFERRED TO SCHOOL DISTRICT AND OR LAW  
ENFORCEMENT PERSONNEL AND BE SUBJECT TO APPROPRIATE  
CONSEQUENCES

**Sign Two**

M.V.U.S.D.  
(Activities Prohibited on School Grounds)  
The following activities are prohibited on school grounds except as  
authorized, regulated, or directed by school site administration.  
\*\*\*\*\*  
(8) Bringing or Allowing Animals on Campus  
\*\*\*\*\*  
Persons violating the spirit or letter of this policy shall be referred to the  
Murrieta Valley Unified School District and/or the Murrieta Police Dept.  
Such persons shall be subject to the appropriate consequences and/or  
fines.

**Legal Standards**

The Section 504 regulations provide that no qualified person 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.<sup>3</sup> Section 104.4(b) provides that in providing any aid, benefit, or service, a recipient school district may not engage in disability discrimination directly or through contractual, licensing, or other arrangements. The Title II regulations create the same prohibition against disability-based discrimination by public entities.<sup>4</sup>

Under both the Section 504 regulations<sup>5</sup> and the Title II regulations,<sup>6</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. In addition, the Title II regulations 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 public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.<sup>7</sup> 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 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.<sup>8</sup> 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 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.<sup>9</sup> 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.

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<sup>3</sup> 34 C.F.R. § 104.4(a).

<sup>4</sup> 28 C.F.R. § 35.130(a) and (b).

<sup>5</sup> 34 C.F.R. § 104.4(b)(1)(i), (ii) and (iii).

<sup>6</sup> 28 C.F.R. § 35.130(b)(1)(i), (ii) and (iii).

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

<sup>8</sup> 28 C.F.R. §§ 35.104 and 35.136.

<sup>9</sup> 28 C.F.R. § 35.136(a).

The Title II regulations 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.<sup>10</sup> A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

A service animal may only be excluded from a public entity's programs, events, and activities if it: (1) is not housebroken; (2) is out of control and its handler has not brought it back under control; (3) creates a fundamental alteration of a program; or, (4) is a direct threat.

### Analysis

Prior to OCR concluding its investigation, the District expressed an interest in resolving this matter pursuant to section 302 of the CPM and OCR determined that it was appropriate to resolve the matter in this manner.

Although OCR did not conclude its investigation, during the course of the investigation it did note a potential compliance concern in this matter related to the treatment of the complainant because of her use of a service animal at an event held at a District facility.

As stated previously, the complainant attended an event at the School with her service animal. The event was presented by a third party that had contracted with the District to use the School's gymnasium for the event. After watching the event for several hours without any issues or concerns, a custodian employed by the District informed the complainant that she had to remove her service animal from the gymnasium because the District did not permit dogs on its campuses. Despite advising the custodian that her dog was a service animal and the law permitted her to have it with her at the event, the custodian continued with his demands that she remove it from the event and he eventually involved the administrators of the event. After having further conversation with the custodian and event administrators, and after the custodian threatened to shut down the event and eventually called law enforcement, the complainant opted to leave the event because of the demand to remove her service dog.

As an initial matter, OCR notes that because the Section 504 and Title II regulations prohibit the District from assigning or delegating its non-discrimination obligations to third parties, it matters not whether it was the District custodian or the third party event administrators who were involved with the treatment of the complainant since the District is ultimately responsible for ensuring that any of its facilities are used in a nondiscriminatory manner regardless of what they are being used for and who is using them.

OCR has concerns with the custodian's interactions with the complainant and whether his treatment of her complied with the requirements of Title II's service animal regulations.

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<sup>10</sup> 28 C.F.R. § 35.136(f).

His repeated demands that the complainant remove her service dog from the gymnasium failed to appreciate and recognize that, under the regulations, service animals are an explicit modification or accommodation to any District's policy that prohibits dogs in its facilities and, as such, service animals cannot be treated in the same manner as dogs. Thus, the District's prohibition against dogs in its facilities is inapplicable to a service dog and the only manner by which the complainant's service dog could be excluded from the event in the gymnasium was if it was out of control, not housebroken, a direct threat, or a fundamental alteration of the event. None of these means of exclusion were present in this matter.

Had the custodian been aware of the legal requirements for use of a service animal and was unsure whether the complainant's dog was a service animal, he may have inquired of the complainant if her dog was needed because of a disability and, if so, what task or work has the dog been trained to perform. The complainant's satisfactory responses to the two questions would have established her dog as a service animal and no further inquiry would have been permitted.

The District's policies recognize the complainant's ability to have and use her service dog at the gymnasium on the day of the third-party event and the District has informed OCR that the custodian's preclusion of her use of her service dog appears to be based on his erroneous reading and application of the language found in the signage posted around the School's campus.<sup>11</sup>

Based on the above-stated concerns with the treatment of the complainant and the asserted reasons for it, OCR would have continued with its investigation in this matter. However, prior to so doing and before OCR determined whether the treatment of the complainant failed to comply with the Title II and Section 504 regulations, the District expressed a desire to resolve this matter with a resolution agreement pursuant to section 302 of the CPM. OCR is satisfied that the District's willingness to resolve this matter prior to the conclusion of OCR's investigation and the resolution agreement it has accepted will adequately and properly address the area of concern identified by OCR during the investigation.

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<sup>11</sup> Although the District's policy related to service animals technically complies with the requirements of the regulations in that it is an accurate representation of what is required by them, OCR encourages the District to revise its policy so that it adequately states the broad coverage of the regulations and more fully states all of the requirements and obligations of both an individual with a disability who uses a service animal and the District. For instance, the policy only states that individuals may use service animals on "school" premises but the District has many facilities that are not considered a "school," such as its administrative offices and athletic/performance venues, at which an individual may also use a service animal. Thus, limitation of the policy to only schools results in an incomplete and narrower scope of coverage than what the regulations provide. Additionally, the policy should inform readers of all of the regulations' requirements instead of only a few. As an example, the policy does not have any information in it related to the scope of permissible inquiry that may be made of an individual who uses a service animal. Including the two permissible questions along with the prohibition on requesting or requiring information beyond the two permissible questions would be of benefit to both individuals using service animals and District staff and personnel who may encounter such individuals and are unsure of how to interact with them.

This concludes the investigation of this complaint.

To address the complaint allegations and OCR's concerns identified in the investigation, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement). The Agreement requires the District to revise all of its signage and other printed material related to dogs and animals on its campuses and in its facilities so that it reflects that service animals are an exception to the prohibition of having dogs and animals present. It also requires the District to create a memorandum for distribution to its administrators and staff that explains an individual's ability to use a service animal<sup>12</sup> and, thereafter, provide training about the content of the memorandum to its custodial staff and any other staff who may work or be present as District representatives during third-party events occurring outside of normal business hours and at District facilities.

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 it. Upon completion of the obligations under the Agreement, OCR will close the case.

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual subjected to such retaliatory treatment may file a complaint alleging retaliation.

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, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

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<sup>12</sup> The Agreement also requires the District to send the memorandum to XXXXXXXX X along with an explanation of why it is sending the memorandum.

Thank you and counsel for the District, Dina Harris, for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Alan Konig, Civil Rights Attorney, at [Alan.Konig@ed.gov](mailto:Alan.Konig@ed.gov) or (415) 486-5527.

Sincerely,

/s/

James M. Wood  
Team Leader

encl.

cc: Dina Harris, Esq.