



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 26, 2019

Mr. Sean Dotson
Superintendent
Tumwater School District No. 33
621 Linwood Ave SW
Tumwater, Washington 98512

Re: Tumwater School District No. 33
OCR Reference No. 10171082

Dear Superintendent Dotson:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Tumwater School District No. 33 (district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the district discriminated against a student, on the basis of disability, when a district school bus driver told the student that she could not take her service animal to school on the bus and made disparaging remarks about her use of a service animal on or around November 22, 2016.

As explained below, prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance. Title II prohibits disability discrimination by public entities. The district receives federal financial assistance from the Department and is a public entity. Therefore, the district is required to comply with these federal civil rights laws.

Under Section 504 and Title II regulations, a school district is prohibited from excluding a qualified individual with a disability from participating in, denying him/her the benefits of, or otherwise subjecting him/her to discrimination based on disability. 34 C.F.R. § 104.4(a) and 28 C.F.R § 35.130(a). Regarding service animals, the Title II regulations at 28 C.F.R § 35.136

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specifically state a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability. In addition, individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

OCR's investigation to date included reviewing information provided by the complainant and the district. Based on that review, OCR has a concern that the student was not permitted to participate in a district program while accompanied by her service animal.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the entity expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. In light of the district's willingness to comprehensively address the concern identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that the district may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant 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.

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OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by November 1, 2019.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Charlotte Cunningham, Attorney, by telephone at (206) 607-1610, or by e-mail at charlotte.cunningham@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Honorable Chris Reykdal, Superintendent of Public Instruction