



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

XXXX

Timothy Sands, President
Virginia Polytechnic Institute and State University
Burruss Hall, Suite 210
800 Drillfield Drive
Blacksburg, Virginia 24061

Re: OCR Complaint No. 11-17-2220
Resolution Letter

Dear President Sands:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against Virginia Polytechnic Institute and State University (the University). The Complainant, who filed the complaint on behalf of her client (the Student), alleged that the University discriminated against the Student on the basis of disability (XXXX) by:

1. XXXX, prohibiting her from bringing her service dog onto the University campus; and
2. On XXXX, informing the Complainant and the Student that it would not consider allowing the Student's service dog back on campus unless XXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the University expressed a willingness to resolve the allegations and compliance concern relating to this case by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Additionally, during the course of investigating the complaint, OCR also identified the following compliance concern: the University had failed to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 and Title II violations.

Background

The Student has XXXX, a disability which requires XXXX. In XXXX, the Complainant notified the University of the fact that she had obtained a service dog that was certified to XXXX and was permitted to bring the service dog on campus. In late XXXX, the University informed the Complainant that her dog was banned from the campus because XXXX. On XXXX, the University’s Dean for XXXX completed her investigation and recommended that, based on XXXX should be banned from the campus.

The Complainant engaged in discussions with the University concerning its decision. On XXXX, the University informed the Complainant and the Student that it would not consider allowing the Student’s service dog back on campus XXXX.

Allegations: The University discriminated against the Student on the basis of disability (XXXX) by:

1. *XXXX, prohibiting her from bringing her service dog onto the University campus; and*
2. *On XXXX, informing the Complainant and the Student that it would not consider allowing the Student’s service dog back on campus XXXX.*

Legal Standards

The legal standards governing our consideration of the allegations are as follows:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .

29 USC § 794. The Section 504 regulation includes the following more specific prohibitions.

A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of [disability]:

- (i) Deny a qualified [individual with a disability] the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified [individual with a disability] an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified [individual with a disability] with an aid, benefit, or service that is not as effective as that provided to others;

. . . .

(vii) Otherwise limit a qualified [individual with a disability] in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

34 CFR § 104.4(b)(1).

The Section 504 regulation also includes the following broad nondiscrimination provision for postsecondary education:

No qualified [student 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 academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

34 CFR § 104.43(b)(1).

The Title II regulation includes prohibitions that are similar to those of Section 504.¹ It also includes the following provision.

§35.136 Service animals

(a) *General.* Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

....

(d) *Animal under handler's control.* A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.*, voice control, signals, or other effective means).

Finally, the Department of Justice, in its “Frequently Asked Questions about Service Animals and the ADA” (July 20, 2015), states that a service animal may not be excluded based on assumptions or stereotypes about the animal’s breed or how the animal might behave. See Answer #23. It also defines “under control” as the animal being “harnessed, leashed, or tethered,” and adds the following guidance.

¹ See 28 C.F.R. § 35.130. See also “Section by Section Analysis, Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35, U.S. Department of Justice (Jan. 26, 1992) (“[T]he standards adopted by [T]itle II of the ADA for State and local government services are generally the same as those required under section 504 for Federally assisted programs and activities.”)

Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control. See Answer #27.

Discussion

OCR has preliminary concerns about whether the University conducted a prompt and thorough investigation and provided the Student with due process before banning her service dog from the campus and imposing conditions on the return of the dog to the campus, e.g., requiring that she obtain service dog certifications in addition to the one that the Student had already obtained for the dog, and whether the ban and conditions complied with Section 504 and Title II. On XXXX, the University expressed an interest in taking voluntary actions to resolve OCR's concerns pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.

Additional Compliance Concern: *The University failed to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 and Title II violations.*

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires recipients that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations.

The Title II regulation is interpreted to include requirements that are similar to those of Section 504. See footnote #1.

Discussion

In examining whether the University conducted an adequate investigation, OCR reviewed the University's website. OCR's review identified concerns about whether its Section 504 procedures provided for the prompt and equitable resolution of complaints of Section 504 and Title II. On September 13, 2017, the University expressed an interest in taking voluntary actions to resolve OCR's concern pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.

Conclusion and Resolution

Pursuant to OCR's *CPM*, at Section 302, the University signed the enclosed Resolution Agreement which, when fully implemented, will resolve the above allegations and OCR's compliance concern. The provisions of the Agreement are aligned with the allegations, OCR's compliance concern and the information that was obtained during OCR's investigation, and are consistent with applicable laws and regulations. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in this case. Failure to fully implement the Agreement could result in OCR reopening this complaints and compliance issue.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 regardless of OCR's findings.

Please be advised that the the University may not harass, coerce, intimidate, discriminate or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR, or files a complaint, testifies or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Peter Gelissen, the OCR attorney assigned to this complaint, at 202-453-5912 or peter.gelissen@ed.gov.

Sincerely,

/s/

David Hensel
Supervisory Attorney, Team III
District of Columbia Office
Office for Civil Rights