



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

4/19/2021

Sent via email: [knicely@rcps.us](mailto:knicely@rcps.us)

Dr. Ken Nicely  
Superintendent  
Roanoke County Public Schools  
2937 Cove Road  
Roanoke, VA 24019

RE: OCR Complaint No. 11-18-1031  
Resolution Letter

Dear Dr. Nicely:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on October 23, 2017 against Roanoke County Public Schools (the Division). The Complainant alleged that the Division discriminates on the basis of disability status. Specifically, the complaint alleges the following:

**Allegation 1:** The Division's policy requires the owner of a service animal to submit a current veterinary health certificate before being allowed on school property.

**Allegation 2:** XXXXX.

OCR enforces 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, 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), 42 U.S.C. §§ 12131 et seq., 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. Because the Division receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

During the investigation to date, OCR reviewed the Division's service animal policy and interviewed the Complainant. Before OCR completed its investigation, the Division expressed a willingness to resolve the allegation<sup>1</sup> pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to

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<sup>1</sup> In emails dated XXXXX. As discussed below, OCR's reviewed the Division's service animal policy in its entirety; as such, Allegations 1 and 2 will be addressed together.

resolve them because OCR’s investigation has identified concerns that can be addressed through a resolution agreement. OCR’s investigation to date is summarized below.

### **Legal Standard**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a school district’s programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a). The Title II regulation also requires public school districts to make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity.

The Title II regulation, at 28 C.F.R. § 35.136, provides that a public school district generally must modify its policies, practices, or procedures to permit individuals with disabilities to use service animals. The regulation, at 28 C.F.R. § 35.104, defines a service animal as “any dog that is 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 regulation provides a non-exhaustive list of examples of work or tasks that may be performed by a service animal.

Under the Title II regulation, at 28 C.F.R. § 35.136, persons with disabilities have the right to be accompanied by service animals in all parts of facilities where the public, participants in programs and activities, or invitees are allowed. A public school district is not permitted to ask about the nature or extent of a person’s disability or require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. If it is not readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, the public school district is permitted to make two inquiries to determine whether an animal qualifies as a service animal: 1) if the animal is required because of a disability; and 2) what work or task the animal has been trained to perform.

The Title II regulation provides that a public entity may ask an individual with a disability to remove a service animal from the premises if: (1) the animal is out of control and the animal’s handler does not take effective action to control it; or (2) the animal is not housebroken. 28 C.F.R. § 35.136(b). In addition, if admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. 28 C.F.R. § 35.130(b)(7).

### **Facts and Analysis**

During the 2017-2018 school year, the Complainant’s children were enrolled in the Division. The Complainant informed OCR that he has a service dog. The Complainant explained in his complaint that he was XXXXX.

According to the Division’s counsel, at the time the complaint was opened for investigation, the Division’s “Service Animals in Public Schools” policy (Policy 9.12) requested that service animal owners do three things before they bring their service animal to school for certain visits and

appointments. Specifically, the policy requested that the service dog owner: (1) send a request to the principal prior to the visit; (2) provide a current veterinary health certificate; and (3) provide proof of the service animal's current vaccinations and immunizations.

The Division revised Policy 9.12 in fall 2018, while this investigation was pending. The current policy no longer requires a veterinary health certificate. However, the Complainant told OCR in XXXXX.

As noted above, Policy 9.12 no longer requires a veterinary health certificate; however, based on OCR's review of Policy 9.12, OCR identified concerns with two provisions (i.e., delays in access to various parts of a school building while necessary arrangements are made, and requiring identifiers for service dogs) that could potentially restrict service animal access in a manner that is not consistent with Title II.

With respect to delays in access, the current version of Policy 9.12(C) states:

Students, employees, or classroom visitors with a disability who want to be accompanied by his/her service animal while on school property are asked, but not required, to contact the building-level principal or the Superintendent at least ten (10) business days before bringing a service animal onto school property so that necessary preparations can be made. Necessary preparations include investigating whether other students, employees or classroom visitors may have a disability which will require accommodation in light of the presence of the service animal on school property. In the event that a student, employee, or classroom visitor comes onto school property with a service animal without first notifying the building-level principal or Superintendent, the student, employee, or classroom visitor may not be permitted to enter all areas of the property with their service animal until necessary arrangements can be made. In these cases, the student, employee, or classroom visitor may be asked to stay in a designated area of the property with their service animal until the necessary arrangements can be made. Necessary arrangements may take several business days or weeks to be completed.

While this provision does not require advance notice, it indicates that an individual who fails to provide advance notice may be asked to stay in a "designated area" until the necessary arrangements can be made, which the policy suggests may take "several business days or weeks." Accordingly, OCR has concerns that such an extensive delay to gain access to non-designated areas of the school building would be inconsistent with Title II's requirement that persons with disabilities have the right to be accompanied by service animals in all parts of facilities where the public, participants in programs and activities, or invitees are allowed.

With respect to requiring identifiers for service animals, Policy 9.12(D) states:

A service animal must be under the control of its handler at all times. The service animal must have a harness, backpack or vest identifying the dog as a trained service dog, a leash (blaze orange in color) for hearing dogs, a harness for guide dogs, or other tether unless either the handler is unable because of a disability to

use a harness, backpack, vest, leash, or other tether, or the use of a harness, backpack, vest, 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.

Based on the aforementioned, OCR has concerns that the language requiring specific identifiers for specific service animals is not consistent with 28 C.F.R. § 35.136(d), which only indicates that a service animal shall have a “harness, leash, or other tether” unless certain circumstances exist.<sup>2</sup>

### **Conclusion**

On April 16, 2021, the Division signed the enclosed Resolution Agreement, which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR’s investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to revise Policy 9.12, notify stakeholders of the revised policy, and provide training to school administrators. Please review the enclosed Agreement for further details. OCR will monitor the Division’s implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the Division’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. A 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 Division must 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, assists, or participates in a proceeding under a law enforced by OCR. 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.

We appreciate the Division’s cooperation in the resolution of this complaint. If you have any questions, please contact Zorayda Moreira-Smith at 202-453-6946 or [Zorayda.Moreira-Smith@ed.gov](mailto:Zorayda.Moreira-Smith@ed.gov) or Sarah Morgan at 202-453-5922 or [Sarah.Morgan@ed.gov](mailto:Sarah.Morgan@ed.gov), the OCR attorneys assigned to this complaint.

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<sup>2</sup> Guidance issued by the Department of Justice states that Title II “does not require service animals to wear a vest, ID tag, or specific harness” that identifies them as a service animal ([https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html), Q8).

Sincerely,

Kristi R. Harris  
Team Leader, Team IV  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Anne E. Mickey, Attorney (sent via email: [AMickey@sandsanderson.com](mailto:AMickey@sandsanderson.com))  
Dr. Jessica McClung, Assistant Superintendent (sent via email: [jmcclung@rcps.us](mailto:jmcclung@rcps.us))