



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

August 22, 2019

Dr. Gregory A. Brown
Superintendent
Russell County Public School
P.O. Box 8
84 Lorraine C. Turner Drive
Lebanon, VA 24266

RE: OCR Complaint No. 11-19-1224
Resolution Letter

Dear Dr. Brown:

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 XXX.¹ The Complainant alleges that the Division discriminated against him on the basis of disability (XXX) on XXX when three officers working at a Division football game required him to produce documentation concerning his service dog and informed him that his service dog could not accompany him into the game.

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. Because the Division receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504 and Title II.

During the investigation to date, OCR reviewed information provided by the Complainant and the District. Before OCR completed its investigation, the District expressed a willingness to resolve the allegation 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 District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

¹ XXX.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The Complainant alleged that on XXX, the XXX was holding onto the service dog's leash when the Complainant approached the entrance to the XXX ("the School") football field. Three sheriff's deputies² were standing at the football field entrance and told the XXX that the dog could not enter the field. The Complainant took the leash, and responded that he was allowed to do so. One of the deputies again told the Complainant that he could not bring the dog into the game.

The Complainant told the deputies that the dog was a service dog, and that he had a letter from XXX as documentation. One of the deputies told the Complainant to retrieve the letter from his car. The Complainant also heard another deputy say "XXX?"

When the Complainant showed the XXX letter to one of the deputies, the deputy said, "anybody can print one of these." The deputy subsequently explained, "if [the School Principal] tells us the dog has to go, then we have to make you take the dog out." The Complainant was XXX so he returned to his vehicle XXX. After spending approximately 15 minutes in his car, the Complainant was able to enter the game with his service dog.

In its response to OCR Complaint No. 11-19-1224, the Division asserted that on XXX, two Russell County Sheriff's Office deputies observed XXX with the dog, and informed the Complainant that dogs were not allowed on school premises. The dog was not wearing any identifying information that would indicate that the dog was a service animal.

The Complainant notified the deputies that they could not request any documentation verifying that the Complainant's dog was a service animal, though the deputies did not request any documentation. One deputy called Russell County's attorney (the Attorney) asking for instruction on how to manage the encounter with the Complainant. After consulting the Attorney, the deputies ended the encounter with the Complainant, and at no point requested that the Complainant remove the dog from school premises.

The Russell County Public Schools Board Policy KKA (SERVICE ANIMALS IN PUBLIC SCHOOLS) ("the Policy"), which was adopted on June 7, 2018 and last revised on October 4, 2018, lists the inquiries school officials may direct toward service animal owners and outlines the requirements that those owners must fulfill to bring a service animal on school grounds. The Policy contains the following provisions:

- "School officials may not ask about the nature or extent of a person's disability and may not require documentary proof of certification or licensing as a service animal."
- "A person who wants to be accompanied by the person's service animal must make a prior written request. If a person wants to be accompanied by a service animal at a school, the request should be made to the school principal...A request must indicate the scope of permission sought, including the time period and the location(s) at which the service animal must be present."

² The Complainant asserted that one of these deputies was also the School Resource Officer ("SRO").

- “The owner or handler of the animal must submit to the school principal or superintendent...each school year documentation from a licensed veterinarian showing proof of the service animal’s current vaccinations and immunizations.”
- “The service animal must have a harness, backpack or vest identifying the dog as a trained service dog.”

Additionally, at the time of the alleged incident, there was a sign at the entrance to the Honaker High School football field that read, “No Pets Allowed.”

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 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, including helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

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).

Based on the above, OCR has concerns that: 1) various provisions of the Division’s Policy are noncompliant with Title II regulations and 2) on XXX, staff may have implemented the Policy in a manner that does not comply with Title II.

The Division's Policy requires that service animal owners must produce a prior written request to the school principal before bringing a service animal on school premises, that owners must submit documentation of the service animal's vaccinations and immunizations, and that the service animal must wear a harness, backpack, or vest identifying the dog as a trained service animal. Under the Title II regulation, at 28 C.F.R. § 35.136, a school district may make only 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. Therefore, OCR is concerned that the above-referenced Policy requires information from service animal owners, including documentation about the animal, that is outside the scope of the permitted inquiries under Title II.

Additionally, while the Complainant and the Division provided disparate descriptions of the events that took place on XXX, OCR has some concerns that the security officers, including a Division SRO, may have made an inadmissible inquiry about the Complainant's service animal because the Complainant's version of events is more consistent with the requirements of the Division's Policy than the Division's version of events. Specifically, the Complainant alleged that the deputies requested documentation proving that his dog qualified as a service animal, and that a deputy referenced the need for permission of the School Principal. These assertions to some extent overlap with the Division's Policy, described above, requiring that individuals who wants to be accompanied by a service animal must make a prior written request to the School Principal. This lends the Complainant's version of events some additional credibility. OCR is concerned that, if the Complainant's allegation is accurate, the deputies' request for documentation was outside the scope of the two permitted inquiries under Title II.

On August 8, 2019, the District 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 District to 1) modify all School football stadium signage to clarify that service animals are permitted at football games; 2) amend the Policy to bring it into compliance with Title II; 3) and provide mandatory Title II and service animal training to all staff, volunteers, and other individuals working School events, including School Resource Officers and other security personnel. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

This concludes OCR's investigation of the complaint. This letter 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. 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 whether or not OCR finds a violation.

Please be advised that the District 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 District's cooperation in the resolution of this complaint. If you have any questions, please contact Kathryne Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryne.Love@ed.gov.

Sincerely,

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

Enclosure

cc: Katie Patton, Esq.