



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

January 5, 2021

Sent via email: pwcssupt@pwcs.edu

Dr. Steven Walts
Superintendent
Prince William County Public Schools
14715 Bristow Road
Manassas, Virginia 20112

Re: OCR Complaint No. 11-20-1310
Resolution Letter

Dear Dr. Walts:

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 July 13, 2020 against Prince William County Public Schools (the Division). The complaint alleges that the Division's Service Animals Policy, Regulation 271-2, discriminates on the basis of disability, in violation of 28 C.F.R. § 35.136.

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 is a public entity, OCR has jurisdiction over it pursuant to Title II.

Before OCR completed its investigation, the Division 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 recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to 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

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

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

The Division’s Policy 271¹ for “Animals in Schools” (the Policy) is accompanied by Division Regulation 271-2 for “Service Animals” (the Regulation). The Policy states that the Regulation addresses circumstances when “disabled persons may have the right to be accompanied by a service animal(s) while on school property or at school-related activities.” The Regulation states that a service animal “cannot be brought onto school property without previous approval.” Specifically, the Regulation requires that a “parent\guardian must complete the Service Animal Form [] and provide all required documentation.”

Provision IV(B) of the Regulation requires a “health certificate that evidences that the animal is currently in good health, free from parasites, and has received all recommended vaccinations.” It also requires that, “All service animals must be spayed or neutered” and “be treated for and kept free of fleas and ticks.”

¹ <https://go.boarddocs.com/vsba/pwcs/Board.nsf/goto?open&id=BTXPAU63B306#> (last visited on 12/10/2020).

Provision IV(C) cites to Virginia Code § 51.5-44 mandating that service animals be identified in a specific manner depending on the type of disability of the person with a disability. For example, a harness is required for a service animal of a person with a visual impairment; a blaze orange leash is required for a service animal of an individual with disabilities related to deafness or hearing impairment; and a harness, backpack, or vest is required for an individual with a mobility impairment.

Provision IV(D) identifies six factors that the Division will consider to deny a service animal access to school premises (these factors appear to be relevant when determining whether the service animal is housebroken or if the animal is out of control). Specifically, the factors are the following:

1. Is the service animal clean, well-groomed, and does not have an offensive odor?
2. Does the service animal urinate or defecate in inappropriate locations?
3. Does the service animal solicit attention, visit, or annoy any member of the student body or school personnel?
4. Does the service animal vocalize unnecessarily, i.e., barking, growling, or whining?
5. Does the service animal show aggression towards people or other animals?
6. Does the service animal solicit or steal food or other items from the student body or school personnel?

OCR also reviewed the “Service Animal Request Form,”² which is required to be completed and submitted to the Division prior to a service animal being brought onto school property. The form asks six questions and provides a section for additional information concerning each question. Below is a summary of the inquiries on the “Service Animal Request Form”:

1. Is the dog a “trained service dog?”	Identify the type of service animal (i.e., hearing dog, guide dog, assistance dog, seizure alert dog, mobility, psychiatric service dog, autism service dog.)
2. Does the dog perform task(s) or function(s) that mitigate the student’s disability?	Indicate work/tasks that the service dog performs (i.e., hearing, guiding, retrieving objects, carrying objects, pulling a wheelchair, opening doors, seizure alert, allergen alert, diabetes alert, balance or mobility assistances, preventing or other interrupting destructive/impulsive behavior, etc.) Or Indicate whether “medical professional [has] confirmed the student’s disability and need for a service dog?”
3. Do the dog and its primary handler have satisfactory proof of training?	Indicate whether service dog has proof of training or if it is “readily apparent” that the dog has proof of training.

² [https://go.boarddocs.com/vsba/pwcs/Board.nsf/files/BKD3L707580B/\\$file/Regulation%20271-2%20Attachment.pdf](https://go.boarddocs.com/vsba/pwcs/Board.nsf/files/BKD3L707580B/$file/Regulation%20271-2%20Attachment.pdf) (last visited on December 10, 2020).

<p>4. Does the dog have a current health certificate? (form indicates that the Division may not require this certificate)</p>	<p>“Is a health certificate from veterinarian provided.”</p>
<p>5. Does the dog meet all minimum standards for a service dog?</p>	<p>Factors that are considered pertaining to the service dog:</p> <ul style="list-style-type: none"> a. Clean, well groomed, and does not have an offensive odor. b. Does not urinate or defecate in inappropriate places. c. Does not solicit attention, visit, or annoy the general public. d. Does not vocalize (i.e., barking, growling, whining, etc.) unnecessarily e. Does not show aggression towards people/animals. f. Does not solicit/steal food or other items
<p>6. If the primary handler is not the student, is the handler otherwise qualified to be on school property?</p>	<p>Consider handler’s criminal history background.</p>

Analysis

OCR has concerns that the Division’s policy and practices regarding service animals are inconsistent with Title II. The Regulation’s Provision IV requires advance notice before an individual can bring a service animal onto Division premises and requires the submission of a “Service Animal Request Form” before a service animal is permitted on school premises despite 28 C.F.R. § 35.136(g) indicating that no such requirement exist. In addition, the Regulation indicates that “supporting documentation” may be required; however, 28 C.F.R. § 35.136(f) specifically states that, “A public entity shall not require documentation.” The Regulation, Provision IV(B), indicates that the service animal must have a health certificate, must provide annual proof of specific vaccinations, must be spayed or neutered, and must be treated for and kept free of fleas and ticks, but the Regulation fails to cite a local health ordinance or state statute that mandate these requirements for all dogs. The Regulation, Provision IV(C) requires a service animal to have a specific identifier depending on the disability the student with the service animal has; however, 28 C.F.R. § 35.136(d) only indicates that a service animal shall have a “harness, leash, or other tether” unless certain circumstances exist. The Regulation also indicates that service animals may be removed from school premises for reasons (i.e., not being clean, well-groomed; soliciting attention or annoying others; etc.) beyond the two reasons (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) permitted by 28 C.F.R. § 35.136(b). Pertaining to the “Service Animal Form,” the form makes multiple inquiries, despite 28 C.F.R. § 35.136(f) stating that only

two inquiries are permitted if it is not apparent that the service animal is trained to do work or perform tasks for an individual with a disability.

Conclusion

In accordance with Section 302 of the OCR Case Processing Manual, a complaint may be resolved at any time when, before OCR issues its final determination, the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement. In light of the Division's willingness to address the concerns identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the Division resulted in the University signing the enclosed Agreement, which when fully implemented, will address the issues raised in this complaint. 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. 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 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, the OCR attorney assigned to this complaint, at 202-453-6946 or Zorayda.Moreira-Smith@ed.gov.

Sincerely,

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

Cc (*sent via email*): Carol Marchant, Assistant Division Counsel