



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

October 4, 2023

Via e-mail only to: [redacted content]

Gregory W. Mair
Attorney at Law
O'Neill, Wallace & Doyle, P.C.
300 St. Andrews Road, Suite 302
Saginaw, Michigan 48638

Re: OCR Docket No. 15-23-1638

Dear Mr. Mair:

This letter is to notify you of the disposition of the above-referenced complaint filed on May 31, 2023, with the U.S. Department of Education, Office for Civil Rights (OCR), against Crawford AuSable Schools (the District) alleging that on [redacted content], a District staff member would not permit the Complainant to take [redacted content] service animal into [redacted content] (the School).

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 by recipients of federal financial assistance. 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 on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and a public entity the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

To conduct its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and two District staff members. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that the District violated the regulations implementing Section 504 and Title II as alleged. The bases for OCR's determination are explained below.

Summary of OCR's Investigation

The Complainant told OCR that on [redacted content], [redacted content] arrived at the School to attend [redacted content] with her service animal. The [redacted content] stopped [redacted content] at the door and told [redacted content] that [redacted content] dog was not permitted to enter the building. The Complainant explained that [redacted content] dog is a service animal

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that [redacted content] uses [redacted content]. The [redacted content] told [redacted content] that bringing the dog into the school would violate District policies. The Complainant said [redacted content] was forced to leave [redacted content] dog with someone else so that [redacted content] could enter the building [redacted content] at the event. After the incident, the Complainant e-mailed the School's [redacted content] and the board office. On [redacted content] spoke to the [redacted content] on the phone. [redacted content] said [redacted content] promised to follow up with [redacted content], but [redacted content] received no further information about a resolution.

District witnesses did not dispute that the Complainant was prevented from taking [redacted content] service animal into the building on [redacted content] and admitted that shortly after the incident they realized that the decision not to allow the Complainant into the school with the service animal was wrong and a mistake. The [redacted content] told OCR [redacted content] contacted the Complainant the following day to acknowledge this had gone against the District's policy and law.

The District staff interviewed by OCR said they had no prior experience with service animals entering school grounds or prior training regarding service animals. Both staff members told OCR that they now understand they are only permitted to ask an individual with a service animal whether the animal is required and what services that animal performs. Both witnesses also noted the District's policy states that visitors with service animals should provide advance notice to the principal before visiting the school. Both witnesses acknowledged that the District cannot require advance notice in order to enter the school with a service animal.

The District witnesses told OCR that, as a general practice, District visitors are permitted to freely enter the School building for afterschool events through doors close to where the event will be held, without the need to check in at the office. The District submitted to OCR a copy of its policy specific to visitors with service animals, which states that visitors "who are accompanied by their service animals are permitted access to all areas of the District's facilities where members of the public, as participants in services, programs or activities, as vendors, or as invitees, are permitted to go. Individuals who will access any area of the District's facilities with their service animals should notify the principal that their service animal will accompany them during their visit."

Applicable Regulatory Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person 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 in its programs or activities by recipients of federal financial assistance from the U.S. Department of Education. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a).

The Title II regulation, at 28 C.F.R. § 35.136(a), requires public entities to modify their policies, practices, or procedures to permit the use of a service animal by an individual with a disability. The Title II implementing regulation 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. 28 C.F.R. § 35.104.

A public entity may only 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). A public entity cannot 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: (1) if the animal is required because of a disability and (2) what work or task the animal has been trained to perform. A public entity cannot require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. 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. 28 C.F.R. § 35.136(f).

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. 28 C.F.R. § 35.136(g).

Analysis, Resolution, and Conclusion

OCR finds that there is sufficient evidence to conclude that the Complainant is an individual with a disability who uses a trained service animal and that District employees prevented the Complainant from bringing [redacted content] service animal into the School [redacted content]. The weight of the evidence, including interviews of involved District employees, showed that District staff was aware that the dog was a service animal when they prevented the Complainant from bringing the dog into the school. It also showed that District employees lacked training and understanding of laws related to service animals. In addition, the District's service animal visitor policy contains an impermissible provision requiring advance notice, beyond what is required for individuals visiting without a service animal, when visiting with a service animal.

For these reasons, OCR finds that the District violated Section 504 and Title II as alleged.

On October 4, 2023, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the violations in accordance with Section 504 and Title II. OCR will monitor the implementation of the Resolution Agreement.

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. Individuals who file complaints with OCR 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, it will seek to protect,

to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the District's first monitoring report by **November 30, 2023**.

For questions about implementation of the Agreement, please contact Aubrie Wancata, who will oversee the monitoring and can be reached by telephone at (202) 987-1844 or by e-mail at Aubrie.Wancata@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640 or by e-mail at Sacara.Miller@ed.gov.

Sincerely,

Sacara E. Miller
Team Leader

Enclosure