

**72 IDELR 224**

**58 NDLR 16**

**118 LRP 24710**

**Cedar Falls (IA) Community School  
District**

**Office for Civil Rights, Midwestern  
Division, Chicago (Iowa)**

05-17-1355

**December 8, 2017**

**Related Index Numbers**

**405.079 Service Animals**

**446.005 Care and Supervision**

**446.022 Relationship to FAPE**

**10.079 Service Animals**

**15.132 Public Entities, In General**

**50.062 Federally Assisted Programs And  
Activities, In General**

**55.202 Service Animals**

**Judge / Administrative Officer**

**Marcela Sanchez-Aguilar, Supervisory Attorney**

**Ruling**

OCR found that there was insufficient evidence that an Iowa district violated Section 504 or Title II when it refused to provide a handler for a student's service animal.

**Meaning**

While districts must generally allow students to use a service animal, districts are not required to provide a handler for a service animal or to provide care and supervision to the animal. Here, a student's request for an aide to hold the dog's leash, issue commands, provide water, and provide a toileting break to the dog went far outside of the scope of what the district needed to provide under the law to avoid discrimination. The district's refusal to provide a one-to-one aide to serve as a handler was not a violation of Title II.

**Case Summary**

An Iowa district did not violate Title II when it

refused to provide a student with a handler for her service animal. In 2016, the student's parent requested that the service dog of the student with an undisclosed disability attend school. The parent indicated that the student could not be in control of the dog and that the dog would need an adult handler to hold the dog's leash, issue commands, provide water, and provide a toileting break to the dog. The principal scheduled an IEP meeting to discuss the need for a one-to-one aide to handle the service dog. The IEP team determined that a service dog was not necessary for the student to receive FAPE and declined to provide a handler for the dog; however, the team decided to allow the dog in the building on a trial basis under the condition that the family provide the necessary assistant/handler. The parent filed a complaint with OCR alleging that the district discriminated against the student in violation of Title II. The Title II regulation at 28 CFR 35.136(d) provides that a service animal shall be under control of its handler and shall have a harness, leash, or other tether unless either the handler is unable because of 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. The Title II regulation at 28 CFR 35.136(e) further provides that a public entity is not responsible for the care or supervision of a service animal. Because Title II and Section 504 do not require a public entity or school district to provide a handler for a service animal or to provide care and supervision to the service animal, OCR found that the evidence was insufficient to establish that the district violated Section 504 or Title II by requiring the student's parents to provide a handler for the service animal.

**Full Text**

Dear Dr. Pattee:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Cedar Falls Community School District (District) on June 12,

2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that, in [ ] 2017, the District discriminated against Student A, a student at [ ] (School), on the basis of disability [ ] when School staff did not allow her service animal to attend school with her.

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II or ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits 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.

During the investigation, OCR reviewed documents provided by the Student A's parents and the District, interviewed relevant District personnel and obtained additional information from Student A's parents and their counsel. Based on OCR's review of the information provided, OCR has determined that the preponderance of the evidence is insufficient to establish that the District discriminated against Student A as alleged. The basis for OCR's determination is explained below.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis on disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulation, at 28 C.F.R. § 35.130(a), similarly provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination by a public entity. The Title II

regulation, at 28 C.F.R. § 35.130(b)(7), also requires a public entity 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(a), states that, "[g]enerally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability." The Title II regulation, at 28 C.F.R. § 35.136(g), further provides that persons with disabilities have the right to be accompanied by service animals in all areas of a public entity's facilities where members of the public, participants in services, programs and activities, or invitees, are allowed.

The Title II 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 work or tasks performed by a service animal must be directly related to the individual's disability." Further, the "provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."

Under the Title II regulation, at 28 C.F.R. § 35.136(f), a public entity 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 entity is permitted to make two inquires 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, at 28 C.F.R. § 35.136(d), provides that a service animal shall be under control of its handler and shall have a harness, leash, or other tether, unless either the handler is unable because of

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). The Title II regulation also provides, at 28 C.F.R. § 35.136(e), that a public entity is not responsible for the care or supervision of a service animal.

The Section 504 regulation at 34 C.F.R. § 104.33(a) states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met and are based upon adherence to the procedures that satisfy the requirements of §§ 104.34, 104.35 and 104.36. The development and implementation of an individualized education program (IEP) under the Individuals with Disabilities Education Act (IDEA) is one means by which FAPE may be provided.

### **The District's Policies**

School Board (Board) Policy 500, Objectives for Equal Educational, is located on the District's website,<sup>1</sup> and states, in relevant part, that "[t]he board supports the delivery of the education program and services to students free of [disability] discrimination." The policy includes a complaint procedure that directs students and parents who believe that their rights under the Americans with Disabilities Act (ADA) and Section 504 have been violated to notify the building principal, supervisor, the Director of Secondary Education or the Director of Elementary Education.<sup>2</sup>

Board Policy 602.7, Special Education Programs, states that the District "shall provide a free, appropriate public education program and related services to students identified in need of special education." The District's Annual Notices, available on its website, also includes a statement of "Rights of Students with Disabilities."<sup>3</sup> The statement provides that no qualified individual with a disability shall be excluded from the participation in, or denied benefits of, or be subjected to discrimination under any program or activity. The statement explains parents' rights under Section 504, including the right for students to receive a free and appropriate public education, the right to be educated with nondisabled students to the maximum extent appropriate and the right to have the school district make reasonable accommodations to allow students an equal opportunity to participate in school and school-related activities.

The District does not have a written service animal policy.

### **Facts**

Student A, an [ ] student, receives special education and related services pursuant to an IEP. Student A's IEP provides for special education instruction in core academic areas (math, language/reading, science and social studies) and basic living skills as well as speech-language services and specialized bus transportation. Student A's IEP states that she engages in "disruptive behavior such as blurting out, interrupting instruction, and talking about unrelated topics" and provides that she have "access to an adult assistant throughout the day to aid her in academic modifications as well as on task behavior and appropriate peer interactions during class."

On [ ] 2016, Student A's parents emailed the School's principal (Principal) to request that Student A's newly acquired service dog attend school with her. Thereafter, on [ ] 2017, the Principal met with Student A's parents to tour Student A's classrooms and to discuss Student A's use of a service animal in

school. According to the Principal, Student A's parent told him that Student A's dog was trained to perform search and rescue and in behavior interruption and deep pressure therapy, and that such actions by the dog would increase Student A's confidence and decrease her anxiety. The Principal's notes from this meeting indicate that Student A's parent initially stated that she was not asking the District to provide a handler, but then later stated that Student A cannot be in control of the dog, and an adult needs to be in control. When the Principal informed Student A's parents that Student A does not have a one-on-one paraprofessional, Student A's parents stated that the school should provide her one. The Principal closed the meeting by indicating that he would have to schedule an IEP meeting to discuss the need for a one-on-one aide to handle the service dog.

In an email dated [ ] 2017, the District provided Student A's parents notice of an IEP meeting scheduled for [ ]. On that date, Student A's IEP team convened with the parents' participation to consider Student A's parents' request that the District assign an adult to "assist" with Student A's dog during the school day. The IEP team meeting notes indicate that Student A's parents reported that Student A's dog has been trained, when cued by an adult handler, to provide emotional support for Student A when she becomes upset and anxious, and is also trained in "search and rescue" if Student A impulsively leaves the area. According to personal notes from team members, Student A's parent again indicated that Student A is not in control of the dog. The team reviewed Student A's current progress, noting that Student A's behavior has improved and the team has not witnessed any outbursts or meltdowns similar to those occurring at home described by her parents. The team also noted that Student A has not shown any signs of elopement-related behaviors during the school day. Based on this information, the team determined that Student A was making good progress both academically and behaviorally with her current IEP services and supports, and a service dog was not necessary for Student A to receive a FAPE. Because

the team determined that a service dog was not necessary for Student A to receive FAPE, the team declined to provide a handler for Student A's dog. The team nevertheless concluded: "While the school team continues to have questions regarding [Student A's dog's] status as a service dog versus an emotional support/therapy dog, the team is willing to permit the dog in the building on a trial basis and allow the family to provide the necessary assistant/handler."<sup>4</sup> Notes from the meeting reflect that the District provided Student A's parents notice of their due process rights, however, the parents declined to pursue those rights.

After the meeting, the Coordinator of Student Services (Coordinator) emailed Student A's parents to inform them that Student A's dog would be permitted to attend school on a 20-day trial basis, provided that Student A's parents furnish a handler for the dog. The Coordinator also asked that Student A's parents provide proof of liability insurance, vaccination records, and registration documentation for the dog.<sup>5</sup> Student A's parents responded that it was inappropriate to have considered whether it was necessary to include Student A's service dog on her IEP, and indicated that Student A should be entitled to use of her service dog under the ADA.

On [ ] 2017, Student A's parents emailed the Coordinator to clarify that Student A's dog is a service animal trained in behavior intervention, namely "task trained to nuzzle, give kisses, or provide deep pressure as commanded, ... to act as an anchor when going from place to place providing safety for the child, and task trained to 'search' for a child if she were missing." Student A's parents also rejected the proposed "trial period," arguing that Student A has a right to have her service dog with her under the ADA. The Coordinator of Student Services responded to Student A's parents by email or [ ], 2017, to clarify that the District has not denied access to Student A's dog. The Coordinator explained that the 20-day trial period was designed to give staff members who work directly with Student A an opportunity to better understand the dog's role during the school day. She

also explained that the parent's request that the District provide a handler for the dog constituted a request for an IEP-related support and something the IEP team therefore was obligated to consider.

On [ ] 2017, the District's counsel wrote a letter to Student A's parents explaining that the [ ] IEP meeting was held in order to determine whether Student A's dog was necessary in order for the District to provide Student A with a FAPE under IDEA, which is a distinct process from considering whether Student A's dog is a service animal under the ADA. Counsel also reiterated the District's position that the District did not deny access to Student A's dog. Rather, counsel explained that "[the District] will not provide a handler and that it will review the role of the dog after 20 school days to determine if [the dog] meets the legal definition of a service dog not based on training alone but on the role that the dog plays in [Student A's] school activities."

Student A's parents retained counsel and, on [ ] 2017, Student A's attorney emailed the District, asserting that the District's plan for evaluation of Student A's dog following the 20-day trial period violates the ADA. Student A's attorney asserted that Student A's dog meets the definition of a service animal because Student A's parents identified what work or task the dog has been trained to perform. Neither the attorney nor Student A's parents informed the District it would provide a handler so that Student A could bring her dog to school.

On [ ] 2017, after Student A began to experience increasing anxiety at home, Student A's IEP team convened to reconsider Student A's parent's request for the District to provide an adult to handle Student A's dog. During the meeting, Student A's parent reported that Student A's pediatrician and psychologist recommended that Student A have access to her service dog in school so the IEP team obtained permission to speak to Student A's physicians. The Coordinator and Principal spoke separately with Student A's psychologist and doctor. The Psychologist stated that Student A would benefit from having the dog at school but she "cannot tell

how it should happen." The doctor stated that he was supportive of the family but was not pushing for the dog to be at school. He observed that if the dog was at school, an attendant would be needed. However, he said he did not have enough experience to serve as an expert witness.

Based on this information, the team concluded that access to a service dog is not necessary for the delivery of FAPE to Student A. The team also considered Student A's parents' request under Title II of the ADA, and agreed to allow Student A's dog to accompany her to school during a trial period if Student A could serve as the handler or if her parents would provide a handler to manage the dog.

Student A's dog has not attended school with her dog to date. Student A's parents have not informed the District that they are willing to provide a handler or participate in a 20-day trial period because they maintain that they provided information establishing that Student A's dog is a qualified service animal. Specifically, they assert that the dog is trained to accept tethering, and to respond to adult commands to "nudge," "touch," "kiss" and "lap" to disrupt negative behaviors and/or break cycles to prevent a meltdown. Regarding elopement, the parents state that, while tethered to Student A, her dog has been trained to go down to the floor when commanded "down" to prevent Student A from wandering away. The dog requires a command to "search and rescue" Student A if she should wander away while untethered. According to Student A's parents, Student A's dog also has been trained to intervene without command when Student A becomes anxious or stressed and hits her head and pulls her hair.<sup>6</sup> According to the parents, the dog is trained to walk through the hallway with Student A and an accompanying adult who holds the dog's lease and redirects the dog, if necessary. Student A's parents also acknowledge that an adult staff would need to monitor the dog to "make sure that he doesn't get into something that he shouldn't have." Student A's dog also needs to have a water and toileting break during lunch. The parents did not provide OCR information indicating what handling

tasks, if any, Student A can perform.

The District reported that it presently has one student who uses a service animal in school. That student has a diagnosis of autism and displays significant behaviors, including physical outbursts and elopement at school. The service dog has been trained in search and rescue, and was identified by the student's IEP team as a necessary component of FAPE. The District has paid for a dedicated one-on-one aide who also services as the handler for the student's service animal.

### **Analysis and Conclusion**

Title II and Section 504 require that school districts generally allow students to use a service animal. For purposes here, OCR assumed that Student A's dog is a service animal.

However, these laws do not require a public entity to provide a handler for a service animal nor assume responsibility for the care and supervision of the dog. Although Student A's parents argue that they are not asking for a handler but for assistance in handling Student A's dog, the evidence shows that the dog requires an adult handler for purposes of control and in order to perform its tasks. The evidence establishes that Student A's parent told the District that an adult would need to hold Student A's dog's leash, issue commands to control the dog and to prompt almost all the tasks that the dog would perform. Student A's parents have not identified any dog handling tasks that Student A can perform. Rather than requesting staff to provide assistance to Student A so she can handle the dog, Student A's parents are requesting that staff directly control the dog's actions. Moreover, Student A's dog must be provided a water and toileting break by an adult. Because Title II does not require a public entity or school district to provide a handler for a service animal or to provide care and supervision, the evidence is insufficient to establish that the District violated Title II by requiring Student A's parents to provide a handler.

Insofar as Student A's parents request an aide to

serve as a handler in order to improve Student A's educational functioning, this request may be considered as part of the IEP process. However, based on long-standing OCR policy, OCR does not review the results of individual placement or other educational decisions of the IEP team, so long as the school district complies with the procedural requirements of Section 504, as it did in this case. A due process hearing is the proper forum for challenging the appropriateness of the IEP team's decision regarding the provision of FAPE.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issue other than those addressed in this letter. The complainant may file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

We wish to thank the District for the cooperation extended to OCR during our investigation, especially Beth E. Hansen, the District's legal counsel. If you have any questions, please contact Roberto Flores,

Equal Opportunity Specialist, at 312-730-1688 or by email at Roberto.Flores@ed.gov.

42 USC 12132

42 USC 12133

42 USC 12134

<sup>1</sup><http://www.cfschools.org/school-board/policies>.

<sup>2</sup>[http://www.cfschools.org/about-us/annual\\_notices](http://www.cfschools.org/about-us/annual_notices)

<sup>3</sup>[http://www.cfschools.org/about-us/annual\\_notices](http://www.cfschools.org/about-us/annual_notices)

<sup>4</sup>The District informed OCR that it questions Student A's dog's status as a service animal because the dog is generally not trained to recognize Student A's concerning behaviors and respond, as is typical for service animals. Instead, Student A's parents told the IEP team that an adult would have to observe Student A and cue the dog to act in response to negative behaviors by nuzzling, kissing, applying pressure, etc. The team nevertheless agreed to allow Student A to bring her dog to school with her for a trial period to determine if the dog qualifies as a service animal. Although the parents state they are reluctant to undergo the effort and expense of hiring a handler when there is no guarantee that Student A will be able to continue to bring the dog and handler to school after the trial period, that uncertainty exists regardless of the District's stated "trial period." A public entity may deny access to a service animal that it previously allowed based on the failure of the service animal to meet the regulatory requirements even after the service animal is permitted entry.

<sup>5</sup>The District informed OCR during the investigation that it is no longer requiring the parents to provide proof of liability insurance. Title II does not exempt individuals who have service animals from local animal control or public health requirements. The Cedar Falls Code of Ordinances requires owners of dogs to annually obtain a license and present evidence that the dog has been vaccinated against rabies. See Cedar Rapids, IA Code ch. 6, art. II, §§ 6-42 and 6-45 (1998).

<sup>6</sup>The Coordinator did not recall Student A's parents' indicating that Student A's dog is trained to intervene without a command.

#### **Statutes Cited**

29 USC 794

42 USC 12131