



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

February 12, 2016

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Dr. Rex Fuller
President
Western Oregon University
Lieuallen Administration 208
345 N. Monmouth Avenue
Monmouth, Oregon 97361

Re: Western Oregon University
OCR Reference No. 10142210

Dear Dr. Fuller:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the referenced complaint against Western Oregon University. The complainant alleged that on or about May 1, 2013, upon visiting the university's art gallery with his service dog, he was asked inappropriate questions regarding his service dog.

OCR enforces section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990 and their implementing regulations, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the U.S. Department of Education and by public entities, respectively. The university is a recipient of federal financial assistance from this Department and is a public entity and, therefore, is subject to the requirements of Section 504 and Title II.

The issue investigated by OCR was whether the university made prohibited inquiries regarding a disabled person's use of a service animal in violation of the Title II regulation at 28 C.F.R. § 35.136.

OCR determined that the evidence supported a conclusion that the university failed to comply with Section 504 and Title II with regard to the issue investigated. After notifying the university of the identified compliance concerns, OCR entered into discussions with the university regarding a Settlement Agreement that would serve to voluntarily resolve those concerns. The university has made a commitment in the agreement to undertake action that, when completed, will fully address the compliance concerns identified by OCR.

OCR's findings of fact and conclusion set forth below are based upon information and documents provided by the complainant and the university.

Findings of Fact

1. OCR found that the complainant is a qualified individual with a disability who uses a service animal.
2. On or around May 1, 2013, the complainant visited the university's art gallery with his service dog and another student.
3. During that visit, a student worker in the art gallery informed the student that dogs were not allowed in the gallery. The complainant responded that his dog is a service animal.
4. According to the complainant and the other student, the student worker asked "how come your dog does not have certification on?" and requested to see papers to verify the dog is a service animal. In response, the complainant directed the student worker to the computer to research federal laws related to service animals.
5. The university has not disputed that impermissible questions were asked by the student worker.
6. The complainant told OCR that, although he was asked questions that are impermissible under the Americans with Disabilities Act, he and his service animal were allowed to remain in the art gallery and were not excluded.

Analysis and Conclusion

With regard to the issue of whether the university made prohibited inquiries regarding the complainant's use of a service animal, OCR found that it is undisputed that when the complainant sought access to the art gallery with a service animal, he was asked by a person employed by the university, "how come your dog does not have certification on?" and was asked to produce papers to verify that the dog is a service animal.

Regarding permissible inquiries regarding service animals, the Title II regulation at 28 CFR §35.136 states:

“(f) Inquiries. A public entity shall not 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. A public entity may ask if the animal is required

because of a disability and what work or task the animal has been trained to perform. A public entity shall not 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 ...”

Therefore, OCR has determined that the university made prohibited inquiries about the student’s service animal which is a violation of the regulations. However, despite the inquiry, the complainant was not excluded from the university’s art gallery.

Additionally, during the course of OCR’s investigation, OCR reviewed the university’s service animal policies and procedures and identified a number of concerns including potentially improper documentation requirements, location restrictions, and vaccinations requirements.

The university has agreed to take the actions set forth in the enclosed Settlement Agreement which, when fully implemented, will resolve the identified violation regarding the impermissible inquiry. The agreement will also address the concerns identified with the university’s service animal policies and procedures. OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by June 1, 2016.

This letter sets forth OCR’s determination in an individual OCR case and should not be interpreted to address the university’s compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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 university 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.

Thank you and your staff for your cooperation during the investigation of this complaint. If you have any questions, please contact W. Frederick "Fritz" Greenlee, senior attorney, by telephone at (206) 607-1613 or by e-mail at fritz.greenlee@ed.gov

Sincerely,

/ s /

Sukien Luu
Supervisory Attorney

Enclosure: Settlement Agreement