



UNITED STATES DEPARTMENT OF  
EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310

August 28, 2015

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Mr. Kurt Hilyard  
Superintendent  
Union Gap School District No. 2  
3201 S. 4<sup>th</sup> Street  
Union Gap, Washington 98903

Re: Union Gap School District No. 2  
OCR Reference No. 10151156

Dear Superintendent Hilyard:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against the Union Gap School District No. 2 (the district). The complaint alleged:

1. The district discriminated against a person with a disability when on December 2, 2014, a Union Gap School administrator sent a letter to the person informing her that she was not allowed to use her service animal on Union Gap School property.
2. The district's policies and procedures regarding service animals violated the Americans with Disabilities Act.

As explained below, prior to completion of OCR's investigation, OCR determined that allegation No. 1 had been resolved. With respect to allegation No. 2, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 (Section 504) and title II of the Americans with Disabilities Act of 1990 (Title II). These statutes and their implementing regulations, at 34 C.F.R. Part 104 and 28 C.F.R. Part 35, prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities, respectively. The district receives federal financial assistance from this Department and is a public entity and, therefore, is required to comply with these laws.

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) states that no qualified disabled person shall, on the basis of 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

Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1) states that a recipient, in providing any aid, benefit or service may not, on the basis of disability, (i) deny a qualified disabled person the opportunity to participate in or benefit from an aid, benefit or service or (vii) otherwise limit a qualified disabled person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. Title II has a similar regulation at 28 C.F.R. § 35.130 that prohibits discrimination on the basis of disability.

The regulation implementing Title II at 28 CFR §35.136 (a) states that, “Generally, 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 §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 investigation to date indicated that, on December 2, 2014, a district administrator sent the complainant a letter stating that a service animal must be assisting a person with a disability, and requesting that she not bring her service animal in training to school per Union Gap School Board policy 2030. The letter included as attachments the district’s Policy 2030 and its accompanying Procedure 2030P.

On December 7, 2014, the complainant replied to the district’s letter and outlined requirements of the Americans with Disabilities Act regarding service animals and identified the two questions public entities are allowed to ask: (1) Is the dog required because of a disability?; and (2) What task or service has the dog been trained to perform? The complainant’s letter also provided information in response to those two questions.

The complainant initially filed this complaint with the U.S. Department of Justice on December 7, 2014, and it was referred to OCR on March 16, 2015. OCR contacted the complainant who stated that she believed she was still being discriminated against and she had not attempted to return to the school in question since she received the December 2, 2014, letter.

#### Allegation No. 1

Upon receiving this OCR complaint, the district informed OCR that in response to the complainant’s December 7, 2014, letter, a district administrator called the complainant on December 12, 2014. The administrator explained that he had sent the original letter because, based on the complainant’s statement that the animal was “in training,” he thought it was being trained for use by another individual. The administrator told the complainant to disregard the letter of December 2, 2014, and said she was welcome to bring her service animal with her to the school in question at any time. The district also provided OCR with the notes the administrator took on December 12, 2014, to document that conversation.

During the initial conversations about this complaint, you told OCR that you believed that the complainant’s alleged discrimination had been resolved and remedied by the telephone conversation between her and the district administrator on December 12, 2014. However, to ensure that the complainant understood that she was welcome to bring her service animal to school at any time, the district agreed to follow-up the December 2014 telephone conversation with the complainant to ensure that she understood that her service animal was not excluded from the school in question.

The district then provided OCR with a copy of a letter sent to the complainant, dated June 9, 2015, from an administrator that stated, “You and your service animal are welcome here anytime at XXXXX XXXXX School. No further action is required by you.”

The complainant confirmed with OCR that she received the June 9, 2015, letter.

Based on the above information, OCR determined that allegation No. 1 has been resolved and no further action is necessary.

#### Allegation No. 2

With respect to allegation No. 2, the district provided OCR with copies of its Service Animal in Schools Policy 2030 and Procedure 2030P, and requested to resolve any Section 504 or Title II concerns with a voluntary resolution agreement.

In accordance with Section 302 of OCR’s Case Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and must be consistent with applicable regulations.

In this case, OCR has determined that there are concerns about the district’s current policy and procedure, and that it is appropriate to resolve allegation No. 2 with an agreement to ensure that the district’s policy and procedure are made consistent with the current Title II regulation at 28 CFR §35.136 and recent guidance from the Department of Justice on Service Animals.

The actions the district will take under the agreement include receiving technical assistance and feedback on its existing policy and procedure from OCR, revising its policy and procedure, publishing the new policy and procedure, and providing training to staff on them.

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 September 10, 2015, or within 15 days of receiving feedback on Policy No. 2030 and Procedure No. 2030P, whichever is later.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Kelli Schmidt, Attorney, by telephone at (206) 607-1638, or by e-mail at Kelli.Schmidt@ed.gov.

Sincerely,

Barbara Wery  
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Honorable Randy Dorn, Superintendent of Public Instruction