



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS, REGION IX

MAY 11 2007

Edralin J. Maduli
Interim President/Superintendent
Cuesta College
San Luis Obispo, CA 93403-8106

(In reply, please refer to case no. 09-05-2190)

Dear President Maduli:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed against Cuesta College (College). The complaint alleged that the following provisions in the College's service animal policy (policy) discriminated against disabled persons:¹

- **Vaccinations:** The animal must be immunized against diseases common to that type of animal. Dogs must have had the general maintenance vaccine series, including but not limited to vaccinations against rabies, distemper, and parvovirus. Other animals must have had the appropriate vaccination series specific for the type of animal, [County Code § 9.08.150, 9.08.170, 9.08.180, 9.08.190]. All vaccinations must be current.
- **Health:** The animal must be in good health, displaying no skin, eye, ear, or nose irritation, infection, or discharge, unless the animal has a release from a veterinarian showing the animal free of any health risk to the public. The animal must be free of fleas and external parasites.
- **Leash and Control:** The animal must be on a leash at all times. The partner/handler must be in control of the animal at all times. The care and supervision of a service animal is solely the responsibility of its partner/handler.
- **Cleanup:** The partner/handler must follow District policy in cleaning up after the animal defecates. District policy requires the partner/handler to: always carry equipment sufficient to clean up the animal's feces whenever the animal and partner/handler are off the partner's property, or animal's home base.
- **Registration:** A partner/handler who is a District disabled student who wishes to bring a service animal/trainee onto the campus must register his/her animal with the Disabled Student Programs and Services (DSPS) Department. Employees

¹The complaint did not allege that any specific student had been discriminated against because of the policy.

and other partners/handlers who wish to bring service animals onto the campus must register their animals with the Public Safety Office. Visitors with service animals must check in with the Public Safety Office. (See form attached.)

- **Uncleanliness:** Partners/handlers with animals that are unclean, noisome and/or bedraggled may be asked to leave District property. An animal that becomes wet or muddy, but is otherwise clean, should be considered a clean animal. Animals that shed in the spring sometimes may look bedraggled. If the animal in question is well groomed, consider the animal tidy even though its spring coat is uneven and messy-appearing or it has become wet from weather or weather-related incidents.

The complaint was investigated pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (ADA), and their corresponding implementing regulations (34 C.F.R. § 104, *et seq.* and 28 C.F.R. § 35.101, *et seq.*, respectively). Section 504 and Title II prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance, and by public entities, respectively. The College receives Department funds, is a public college, and is, therefore, subject to the requirements of Section 504 and Title II.

Based on review of the policy and the application of Section 504 and Title II, OCR has determined that the College's policy is in compliance with federal law. The applicable legal standards and the reasons for our determination are summarized below.

The provisions of the College's policy are found within its Board Policy 7985 that was approved on November 7, 2001 by the Cuesta College Board of Trustees. The purpose of the policy is stated to be: ". . .to provide regulations regarding the use of service animals on [San Luis Obispo County Community College] District property, to comply with ADA Regulations; and to ensure that an individual with a verifiable disability, visual or not, who needs a service animal may participate in and benefit from District and College services, programs, and activities."

Vaccinations, Health, and Cleanliness Requirements

Regarding the vaccinations, health, and cleanliness provisions of the policy, the complaint stated that:

A service dog user cannot be required to have additional vaccinations beyond those required by the state or city that he is living in. To do so is an undue burden upon a service dog user.

A place providing an accommodation for a service animal user has no right under federal law to require a service animal user to provide a health certificate as a condition of access. In addition, the health of the animal must only be to the extent that it does not threaten the health or safety of

other people. Setting subjective standards as to what constitutes “good health” can be discriminatory.

A service animal must be clean only to the extent that it does not present a threat to the health or safety of other people. The school cannot set arbitrary standards and require the service animal to comply or risk access being denied.

OCR understands these statements to be based upon ADA provisions pertaining to public accommodations, specifically Title III of the ADA. However, in this matter, OCR is primarily guided by Section 504 and Title II, as these are the sources of its jurisdiction in disability matters.

The regulations implementing Title II of the ADA state that “[n]o qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity” and that “[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. §§ 35.130(a) and 35.130(b)(7), respectively. The Section 504 regulations contain similar provisions. See 34 C.F.R. §§ 104.43(a) and 104.44.

The Title II regulations permit an institution to impose neutral rules and criteria if they are necessary for the safe operation of the program in question. See 28 C.F.R. § 35.130. The vaccinations, health, and cleanliness requirements have been implemented by the College in order to ensure that the health, safety, and welfare of the public or the College’s students and staff is not endangered by any particular service animal. Such requirements, when applied in a non-discriminatory manner such as this, are a legitimate exercise of the College’s ability and obligation to ensure the safety of those who are present on its campus and facilities.

Additionally, the complaint provided no information to support its conclusion that the health requirements are “subjective standards” that can be discriminatory, that the College has subjectively applied the health requirements in a discriminatory fashion, or that the cleanliness standards have been arbitrarily applied. Nor did the complaint provide any information suggesting any of the requirements were adopted for a discriminatory purpose. As such, OCR has concluded that the vaccinations, health, and cleanliness requirements of the policy do not violate federal law.

Leash and Control and Cleanup Requirements

Regarding the leash and control provision, the complaint acknowledged the importance of a service animal being kept under control by a leash or other means. It also correctly noted that there may be some disabled individuals for whom a leash requirement is impossible or impractical because of the nature of their disability or the type of service

animal they utilize and the specific tasks the animal performs. The complaint concluded its concerns with the statement that “. . .for such people a leash requirement would have to be modified as long as the person can demonstrate control of the service animal through voice commands or another means.”

A similar concern was correctly stated in the complaint that there may be some disabled individuals who, because of their disability, are physically unable to comply with the requirements of the College’s cleanup provision.

OCR agrees that some individuals with disabilities, in order to attain access to the programs of the College, will need modification of these existing provisions. A violation of existing federal law would occur if the College refused to consider requests for such modifications. However, the College, in fact, does require that such modifications to its policy be considered upon request.

At the conclusion of the College’s policy is a section entitled “Evaluation Procedures.” The section requires the College to consider alternative modifications to its policy in the event that the policy operates to exclude a disabled student’s service animal. Although not explicitly identified as the interactive process by the College, it is clear from the language of the section that it is intended to require utilization of the interactive process. The interactive process established by the modifications policy is recognized as a desired method of providing specific modifications to policies in order to permit a disabled individual to participate in or receive the benefits of the services, programs, or activities of a public entity. The complaint provided no information suggesting that the College has not given effective notice to disabled students of the opportunity for modification of its rules, that the College has failed to enter into the interactive process, or that it has denied a modification under circumstances that would violate Section 504 or Title II.

The “Evaluation Procedures” section also provides a right of appeal to a student who is denied the ability to use a service animal and provides that a student may also utilize the grievance process if “dissatisfied with a decision made concerning a service animal.” No information was presented to OCR that the College refused to engage in either of the procedures for any student or that it has not complied with either of the procedures in any way. As such, OCR has concluded that the leash and control and cleanup provisions do not violate federal law.

Registration Requirement

The essence of the complaint regarding the registration provision is that the “service animal user has a right to use the service animal without asking for permission to do so.”

As previously indicated, although the provisions of Title III may prohibit such a requirement from being imposed on the owner of a service animal, OCR must utilize the provisions of Section 504 and Title II in determining the College’s compliance with federal law.

As stated earlier, the regulations implementing Title II require that public entities, such as the College, “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”

The modifications that ultimately may be granted by a post-secondary institution are the result of the interactive process previously described. It is the interactive process that distinguishes the requirements of Title III from the requirements of Title II in the post-secondary setting. Whereas Title III generally addresses situations in which an owner of a service animal is likely to have transitory and infrequent contact with a particular public accommodation, the interactive process under Title II contemplates that the contact will be more frequent and regular and, thus, a requirement that a disabled student register with a post-secondary institution is not considered to be unduly burdensome to the student. As such, OCR has concluded that the registration provision does not violate federal law.

Because the provisions stated in the complaint were enacted for legitimate purposes in a non-discriminatory fashion and because the College has in place adequate interactive processes to provide modifications to its policies, there is no basis to conclude that the College has violated any of the laws or regulations enforced by OCR. As such, the complaint is being closed as of this date.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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

If you have any questions about this letter, please contact Alan Konig, Civil Rights Attorney, at (415) 486-5527.

Sincerely,

A handwritten signature in cursive script that reads "James M. Wood".

James M. Wood
Team Leader