



## Calaveras Unified School District

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### Personnel Office

**TO:** All District Staff  
**FROM:** Kathy Griggs  
**DATE:** March 17, 2021  
**RE:** Voluntary Resolution Agreement with the Office for Civil Rights

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In accordance with the Office for Civil Rights (“OCR”) November 18, 2020 Voluntary Resolution Agreement, the Calaveras Unified School District (“District”) is required to notify you of the legal requirements regarding service animals, including the rights and responsibilities of those who use service animals, and inquires that can and cannot be made to those who use service animals.

## Board Policy & Administrative Regulation 6163.2 Revisions and

At the January 19, 2021 Board meeting, the Board voted to adopt a revised version of Board Policy/Administrative Regulation (“BP/AR”) 6163.2.

The revised BP/AR 6163.2 no longer includes the following sections: service animal defined, responsibilities of individual with a disability/handler, service animal requested by a member of the public, and service animal requests on behalf of a student/staff member. Additionally, the revised BP/AR 6163.2 clarifies what constitutes a “service animal” and permissible and impermissible inquiries regarding same, among other topics. Below is an overview of the relevant revisions and legal requirements for service animals.

### *What is a Service Animal*

A service animal means any dog that is individually trained to do work or perform tasks related to the individual's disability for his/her benefit. For example, for an individual who is blind or has low vision, a service animal may mean a dog that helps him/her with vision, navigation, and other tasks; for an individual who is deaf or hard of hearing, a service animal may mean a dog that alerts him/her to the presence of people or sounds; and for an individual with psychiatric or neurological disabilities, a service animal may mean a dog that assists him/her by preventing or interrupting impulsive or destructive behaviors. (28 CFR § 35.104)

Other means by which a service animal may assist an individual with a disability include:

- Carrying or picking up items, opening doors, or flipping switches for individuals with disabilities who have limited use of hands or arms, limited use of their legs, or limited ability to bend or stoop;

- Pulling wheelchairs;
- Alerting individuals with disabilities to the onset of medical conditions such as seizures, protecting them and cushioning them if they fall, reviving them, and performing other tasks that reduce the risk of disability-related injury;
- Doing work or performing tasks for individuals with traumatic brain injury, intellectual disabilities, or psychiatric disabilities, such as reminding an individual with depression to take medication or waking up the individual, alerting an individual with anxiety to the onset of panic attacks, orienting individuals with schizophrenia to reality, and helping individuals with intellectual or cognitive disabilities to locate misplaced items, find places, or follow daily routines; and,
- Providing physical support and assisting individuals with physical disabilities with stability and balance.

Service animals are not required to and oftentimes do not have a harness, sign, or symbol indicating that they are service animals.

### **Rights of Individuals with Disabilities**

- The District will not discriminate against any individual on the basis of disability, including individuals who use service animals, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the District in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12182, and the relevant implementing regulations, 28 C.F.R. Part 35.
- Generally, the District will modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
- Individuals with disabilities must be permitted to be accompanied by their service animals in all areas of the District's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go. (28 CFR § 35.136; Ed. Code § 39839; Civ. Code §54.2.) This obligation is distinct from the District's obligation to determine whether, as part of a student's 504 plan or IEP, the student requires a service animal for a FAPE.
- If a special education student makes a request to bring a service animal to school, the District staff should *also* consider whether it needs to convene an IEP team/504 plan meeting to discuss whether the service animal is needed for the child to receive a FAPE. At the IEP meeting, the District should determine whether the animal is necessary to provide the student with a FAPE. Absent a showing of educational need specifically for a service dog/animal, a district is not required to include, as part of a student's IEP, a dog under the IDEA. (*Parents v. Bakersfield City Sch. Dist.*, OAH Case No. 2008070167 (2008).) The same is true for students with 504 plans. However, the student will still be allowed to bring the service animal to school, provided it meets the definition of a "service animal" discussed above. The right of a student with a disability to use a service animal at school is distinct from and independent of the student's right to receive a FAPE and the student's ability to use a service animal at school is not subject to the approval of the student's IEP team or Section 504 team. Moreover, if the dog is not a service animal and is not necessary for the

student's receipt of a FAPE, the District may be required to permit the student's use of the dog as a reasonable accommodation or modification pursuant to Section 504.

### *Permissible and Impermissible Inquiries*

You **may only** ask the following questions to determine whether an animal is a "service animal":

- Is the animal required because of a disability?
- What work or task has the animal been trained to perform?

If an individual answers yes to the first question and states the work or task the animal is trained to perform in response to the second question, the District will welcome the individual and his or her service animal without asking any additional questions about the use of the service animal. You 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 (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

You **may not** ask:

- About the nature and extent of the student's disability.
- For documentation or demonstration that a service animal is trained or capable of performing the work it is designed to do.

A service animal is not a pet and individuals with disabilities cannot be asked to pay any extra deposits, fees, or other charges because they are accompanied by a service animal. Deposits, fees, or other charges that are normally required for pets do not apply to service animals.

Additionally, because service animals are not pets and are working animals, students and others should not treat a service animal as a pet or approach it as a pet without first obtaining the approval of the individual using the service animal. Students and others may not tease a service animal, taunt it, block its path, chase it, bark or growl at it, hit or strike it, feed it or give it snacks, play with it, or direct any other action at it that would tend to interfere with its performance of work and tasks.

## **Limitations to Service Animals**

The following are the limitations that may be applied to a service animal:

- The Superintendent or designee may ask any individual with a disability to remove his/her service animal from the school premises or transportation if the animal is out of control and the animal's handler does not take effective action to control it or the animal is not housebroken.

- When an individual's service animal is excluded, he/she must be given an opportunity to participate in the service, program, or activity without having the service animal present. (28 C.F.R. § 35.136; Ed. Code § 39839; Civ. Code § 54.2.)
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to individuals using service animals. If a person who has a legitimate allergy to dogs (dog dander) is located within close enough proximity to a service animal to trigger an allergic reaction, the District will accommodate the individual so that his or her allergies will not be triggered by the presence of the dog.

You may find additional resources and guidance about service animals at the U.S. Department of Justice (DOJ) website, including: *Frequently Asked Questions about Service Animals and the ADA* (available at [ada.gov/regs2010/service\\_animal\\_qa.pdf](http://ada.gov/regs2010/service_animal_qa.pdf)) and *ADA 2010 Revised Requirements: Service Animals* (available at [ada.gov/service\\_animals\\_2010.htm](http://ada.gov/service_animals_2010.htm)).

### *Prohibition of Harassment*

- BP 410 states that District programs, activities, and practices shall be free from unlawful discrimination, including discrimination against an individual or group based on physical or mental disability.
- BP and AR 1312.3 set forth the District's Uniform Complaint procedures, which covers complaints of discrimination.
- Discrimination and harassment of students with service animals is prohibited. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school.

This prohibition includes actions or conduct that is not directed at the student but directed at the service animal.

### *Complaint Procedures*

- A complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) may be filed only by persons who allege that they have personally suffered unlawful discrimination or who believe that an individual or any specific class of individuals has been subjected to unlawful discrimination. (5 C.C.R. § 4630.)

Notwithstanding the above, District policy encourages students and staff to report incidences of discrimination against and harassment of a student with a disability to the

appropriate school principal or the District's Coordinator of Nondiscrimination (BP 5145.3 (b)).

- A complaint alleging unlawful discrimination must abide by the District's Uniform Complaint ("USP") Procedures.
- The complaint must be presented to the compliance officer, Kathy Griggs, Executive Director of Personnel & Operations. The District's UCP must be used to investigate and resolve the complaint.

### *Investigation Procedures*

- In accordance with the District's Uniform Complaint Procedures:
  - Within ten (10) business days after the compliance officer receives the complaint, the compliance officer shall begin an investigation into the complaint. (AR 1312.3 (f).)
  - Within three (3) days of receiving the complaint, informally discuss with all the parties the possibility of using mediation.
  - Within ten (10) days of receiving the complaint, initiate the investigation.
  - Within one (1) business day of initiating the investigation, the compliance officer shall provide the complainant and/or the complainant's representative with the opportunity to present the information contained in the complaint to the compliance officer and shall notify the complainant and/or representative of the opportunity to present the compliance officer with any evidence, or information leading to evidence, to support the allegations in the complaint. Such evidence or information may be presented at any time during the investigation.
  - In conducting the investigation, the compliance officer shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation. The compliance officer shall individually interview all available witnesses with information pertinent to the complaint, and may visit any reasonably accessible location where the relevant actions are alleged to have taken place. At appropriate intervals, the compliance officer shall inform both parties of the status of the investigation.
  - To investigate a complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the compliance officer shall interview the alleged victim(s), any alleged offenders, and other relevant witnesses privately, separately, and in a confidential manner. As necessary, additional staff or legal counsel may conduct or support the investigation.
  - A complainant's refusal to provide the District's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the

investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegation. Similarly, a respondent's refusal to provide the District's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the investigation may result in a finding, based on evidence collected, that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 C.C.R. § 4631.)

- In accordance with law, the District shall provide the investigator with access to records and other information related to the allegation in the complaint and shall not in any way obstruct the investigation. Failure or refusal of the District to cooperate in the investigation may result in a finding based on evidence collected that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 C.C.R. § 4631.)
- Provide a final written decision regarding the findings of the investigation within sixty (60) calendar days of receipt of the decision.

Please contact Kathy Griggs, at (209) 754-2336 or [kgriggs@calaveras.k12.ca.us](mailto:kgriggs@calaveras.k12.ca.us) if you have any questions or concerns regarding the above.