

Dog and Pony Show: New Guidance for Service Animals in the School Setting

Recent ADA regulations clarify questions regarding service animal requests, but many issues remain unresolved.

By Christine T. Cossler



The odds that a school district might be asked to allow a service dog or miniature horse into one of its facilities have increased tremendously in light of new legislative changes. With those changes comes a host of fresh challenges for school administrators and policy makers—not the least of

which are complex disability discrimination laws and intense media coverage.

On one hand, service animals help individuals with a variety of disabilities adapt to the environment and function during the school day, including sight, hearing, and mobility impairments; autism; seizures; and psychological disorders. On the other hand, those same animals may trigger allergies or fear in some students or staff members.

In March 2011, new regulations related to the Americans with Disabilities Act (ADA) became effective, providing further guidance on dealing with requests to allow service animals in school and possibly making the presence of those animals more prevalent.

In a nutshell, the ADA protects individuals with disabilities, including mental disabilities, who use service animals that are trained to perform specific tasks. That protection means schools must allow such animals in facilities, with a few limited exceptions. Further, protection is not limited to students with disabilities but extends more broadly to *any* individual with a disability.

The ADA protects individuals with disabilities, including mental disabilities, who use service animals that are trained to perform specific tasks.

Coupled with the amendments to the ADA that significantly expand the universe of individuals, students, and staff who are protected individuals with a disability, schools may see a significant increase in the number of service animals or service animal requests.

Administrators should prepare themselves for the likely increase in such requests and be aware of some

key factors surrounding the protections provided by these new regulations.

Definition of a Service Animal

Under the ADA, a “service animal” is defined as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability.” A trained miniature horse may also qualify as a service animal in limited circumstances but “other species of animals, whether wild or domestic, trained or untrained, are not service animals.” Keep in mind that state laws may have broader definitions of service animals.

Tasks must be directly related to the handler’s disability.

The regulations also outline the type of work or tasks performed by such animals. Those tasks must be directly related to the handler’s disability. Examples of work or tasks include, but are not limited to, the following:

- Assisting individuals who are blind or have low vision with navigation and other tasks
- Alerting individuals who are deaf or hard of hearing to the presence of people or sounds
- Pulling a wheelchair
- Assisting an individual during a seizure
- Alerting individuals to the presence of allergens
- Retrieving such items as medicine or the telephone
- Providing physical support and assistance with balance and stability to individuals with mobility disabilities
- Helping individuals with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors

The crime-deterrent effects of an animal’s presence do not constitute work or tasks for the purposes of this definition. Likewise, dogs whose sole function is “the provision of emotional support, well-being, comfort, or companionship” are not considered service dogs under the ADA.

Legal Obligations

Under Title II of the ADA, a public entity, including a public school district, must “modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability,” unless the entity can demonstrate that such modifications would fundamentally alter the nature of the service, program, or activity.

However, a district may ask an individual with a disability to remove a service animal from the premises if either of the following concerns exists:

- The animal is out of control and the animal’s handler does not take effective steps to control it.
- The animal is not housebroken.

Additionally, although not expressly stated in the regulations, the commentary to the regulations notes that a district may be able to exclude a service animal if its presence poses a direct threat to the health or safety of others.

Qualifying Individuals

Keep in mind, use of service animals is not limited to students with disabilities. Instead, Title II of the ADA governs the use of service animals by individuals with disabilities at public entities, which would include staff members or others considered to be disabled under ADA parameters.

The ADA defines disability to include a “physical or mental impairment that substantially limits one or more major life activities of such individual.” Recent amendments to the ADA significantly expand the universe of individuals who are subject to its protection. The amendments (a) lessened the substantially limited threshold, (b) expanded the definition of “major life activity,” (c) banned consideration of mitigating measures, and (d) mandated that temporary or episodic impairments must be viewed as if they were active.

The ADA does not limit the type of disability one must have to use a service animal.

Further, the ADA does not limit the type of disability one must have to use a service animal; a direct link, however, must exist between the task an animal performs and the person with a disability’s lack of ability to perform that task.

Other Miscellaneous Provisions

Beyond clear-cut definitions of disability and service animal activity, the final rules include a number of other related provisions, including the following:

- Service animals must be leashed or harnessed except when performing work or tasks where such tethering would interfere with a dog’s ability to perform or unless the handler is unable to use a leash or harness because of his or her disability.
- The Department of Justice has indicated that a service animal’s handler “is not necessarily the individual with a disability.”
- Dogs that are trained to provide aggression protection, such as attack dogs, can be excluded, but dog breeds that are perceived to be aggressive because of stereotypes cannot be excluded solely because of that perception.
- A public entity is not responsible for the care or supervision of a service animal.

- No size and weight limitations have been placed on service animals.
- The use of service dogs for psychiatric and neurological disabilities is explicitly protected under the ADA.

Service Animal Requests

A school district must evaluate each request on a case-by-case basis. Developing a service animal policy with legal counsel in advance of such requests can help provide the parameters for evaluating each request.

Under the ADA regulations, a district may not ask about the nature or extent of a person's disability or require documentation or proof that the animal has been certified or licensed as a service animal. However, a district may ask whether the animal is required because of a disability and what work or task the animal has been trained to perform, unless it is readily apparent that the individual has a disability or that the animal is trained to do work or perform tasks for the individual with a disability.

If a district determines that a service animal does not meet the ADA parameters, it must still give the individual with a disability the opportunity to participate in

its services, programs, and activities without having the service animal on the premises.

Additionally, as of yet, no definitive guidance has been provided on how to resolve competing interests of a student or employee who wishes to use a service animal at school with a student or employee who suffers from severe or life-threatening allergies or a debilitating fear of dogs. Thus, it is crucial that a district seek legal counsel in navigating these concerns.

Other Applicable Laws

Even if an animal does not meet the definition of service animal under the ADA, schools must still consider whether the animal is necessary for a free and appropriate education under the Individuals with Disabilities in Education Act or Section 504. The individualized education program or Section 504 team should make that decision in accordance with law.

Also, districts should consult with legal counsel to determine whether any local or state laws are at play that may require the service animal to be allowed access.

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