

# **UPDATE ON SERVICE ANIMALS IN THE SCHOOLS:**

## **WHO LET THE DOGS OUT?**

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### **I. SERVICE ANIMALS IN SCHOOLS (federal regulations effective 3/15/11).**

- a. Typically not a FAPE issue (but must be “considered” if raised by parents).
- b. A “civil rights” issue – ADA/Title II, 28 C.F.R. Part 35 and Section 504.
- c. School districts are required to adopt and implement policies and procedures governing the admission of service animals in the schools.
- d. This right applies to BOTH students and adults (parents, staff).

### **II. WHAT IS A “SERVICE ANIMAL?”<sup>1</sup>**

A “service animal” means any dog that has been 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. *Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.* The work or tasks performed by a service animal must be directly related to the handler’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of

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<sup>1</sup> The Official Commentary to the Final Regulations states, “[F]ew anticipated the variety of animals that would be promoted as service animals ... which ranged from pigs and miniature horses to snakes, iguanas, and parrots.” P. 40.

hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. *The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort or companionship do not constitute work or tasks for the purposes of this definition.* Final Regulations, ADA, 29 C.F.R. Sec. 35.136 (emphasis added).

**Note:**

1. The animal must be “individually trained” to do something that qualifies as work or a task. An animal that is merely a “pet” or “support animal” is not a service animal. Official Commentary.
2. There are no size or weight limitations on a service animal. Official Commentary, p. 41.

**But See:**

Miniature Horses. A public entity shall make **reasonable modifications** in policies, practices, or procedures to permit the use of a **miniature horse** by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. 29 C.F.R. Sec. 35.136(i) (Final Regulations, ADA (emphasis added)).

Assessment Factors. In determining whether reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse into a specific facility, a public entity shall consider –

- (1) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

- (2) Whether the handler has sufficient control of the miniature horse;
- (3) Whether the miniature horse is housebroken; and
- (4) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

Other requirements which apply to service animals, shall also apply to miniature horses.

28 C.F.R. Sec. 35.136(i). Ponies and full-size horses are not covered by this provision. Official Commentary, p. 47.

### **Why Permit Miniature Horses?**

1. They are no larger than some breeds of dogs (e.g., Great Danes, Labrador Retrievers, and Mastiffs).
2. They can be housebroken like dogs.
3. They are particularly effective for large stature individuals.
4. They live much longer than dogs (average is more than 25 years of service).

## **III. WHAT TYPES OF TASKS ARE PERFORMED BY SERVICE ANIMALS?**

### **1. Autism Service Animals**

- a. Impulse Running – dog is trained to retrieve child to adult.
- b. PICA – dog is trained to interrupt the behavior.
- c. Self-Stimulation – dog is trained to physically interrupt the behavior.
- d. Self Harming – dog is trained to interrupt the behavior.
- e. Mood Swings – dog is trained to crawl onto child's lap and calm child.
- f. Night Awakenings – dog is trained to alert parents by barking.

### **2. Psychiatric Service Animals**

- a. "Grounding" the Individual with a Psychiatric Disability (involves "recognition" and "response;" e.g., sensing that the person is about to have

a psychiatric episode and nudging, barking, or removing the person to a safe location until the episode subsides.)

- b. Calming a person who suffers from panic attacks.
- c. An “emotional support animal” or “therapy animal” is not a service animal. These are animals that have not been trained to perform a specific task that is directly related to an individual’s disability.

### 3. Mobility-Impaired Service Animals

- a. Provide stability for an individual with a disability.
- b. Retrieve items for an individual with a disability.
- c. Open doors for an individual with a disability.
- d. Assist the person in standing, sitting.

**IV. ADA REGULATIONS ON SERVICE ANIMALS** -- Title II of the ADA was amended in 2011 to include final regulations on the use of service animals in public facilities, including public school district programs and buildings. These regulations provide a general outline of school districts’ obligations regarding the admission of service animals:

General. 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. 28 C.F.R. Sec. 35.136(a).

Exceptions. A public entity may ask an individual with a disability to remove a service animal from the premises if –

- (1) The animal is out of control and the animal’s handler does not take effective action to control it; or
- (2) The animal is not housebroken. 28 C.F.R. Sec. 35.136(b).

Animal under handler’s control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash or other tether would interfere with the service animal’s safe, effective performance of work or



tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means). 28 C.F.R. Sec. 35.136(d)

Care or Supervision. A public entity is not responsible for the care of supervision of a service animal. 28 C.F.R. Sec. 35.136(e).

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 (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.) 28 C.F.R. Sec. 35.136(f).

Access to areas of a public entity. Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go. 28 C.F.R. Sec. 35.136(g).

Surcharges. A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal. 28 C.F.R. Sec. 35.136(h)

**Official Commentary on the New ADA Regulations:**

**\*\* [T]itle II entities have the same legal obligations as Title III entities to make reasonable accommodations in policies, practices, or procedures to allow service animals when necessary to avoid discrimination on the basis of disability, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.**

**\*\* Dogs That Can Be Legally Excluded:**

Dogs that are trained to provide aggressive protection, such as attack dogs. However, the commentary specifies that breeds of dog that are "perceived to be aggressive because of breed reputation, stereotype, or the history or experience the observer may have with other dogs" cannot be excluded from schools unless:

- a. The dog is out of control and the animal's handler does not take effective action to control it. (28 C.F.R. 35.136(b)(1))
- b. The dog is not housebroken. (28 C.F.R. 35.136(b)(2))

- c. The presence of the dog constitutes a “fundamental alteration” in the nature of the service, program, or activity. (28 C.F.R. 35.130(b)(7))

**\*\* Other Animals That Can Be Excluded:**

“All wild animals, whether born or bred in captivity or in the wild, are eliminated from coverage as service animals. Nonhuman primates, including capuchin monkeys, will not be recognized as service animals ...because of their potential for disease transmission and unpredictable aggressive behavior.” Official Commentary to the Final Regulations, p. 41.

**V. RECENT CASES INVOLVING SERVICE ANIMALS IN SCHOOLS**

1. *Alboniga ex rel. A.M. v. Sch. Bd. of Broward County, Fla.*, 65 IDELR 6 (S.D. Fla. 2015). A federal court ordered the school district to permit a six-year-old boy with multiple disabilities to bring his service dog, “Stevie,” to school. “Stevie” is trained to assist the child in the event of a seizure or medical emergency (lay across the child’s lap in case of a seizure; keep the child’s head up to prevent choking during a seizure); during outbursts (providing sensory input to help calm the child); and to alert adults if the child experiences a medical crisis (activating a sensor mat, jumping on a mat to set off an alarm, going for help, or getting the attention of an adult). The school district required the parent to provide proof of liability insurance and an adult assistant to walk “Stevie” on bathroom breaks and to provide “handling” (the child is not capable of handling his own service dog). The parent objected to these requests and filed this lawsuit against the district. The court held that the school district was required to provide an adult handler as a “reasonable accommodation” for the child, and that the district could not require the parent to obtain liability insurance to hold the district harmless for any injury caused by “Stevie.” The court also reasoned that the child was “in control of” his service dog due to the fact that the dog was constantly tethered to the child’s wheelchair while at school (and even though the child was physically and mentally incapable of “handling” or “controlling” his service dog). The U.S. Dept. of Justice filed a “Statement of Interest” in support of the parent and child in this case.
2. *E.F. by Fry v. Napoleon Community Schools*, 65 IDELR 221, 788 F.3d 622 (6<sup>th</sup> Cir. 2015). The Sixth Circuit ruled that the arguments made by the parents of a young girl with spastic quadriplegic palsy were “crucially linked” to her education, and must be exhausted under the IDEA prior to pursuing a federal lawsuit under Section 504/Title II. The parents of the child sought the right to have a service dog, a hybrid golden-doodle named “Wonder,” accompany their daughter to school. The school district argued that the child’s educational needs were being met with the provision of a 1:1 adult aide, and that the service animal

was not necessary for the child to receive “FAPE.” The parents argued that the right to have a service dog accompany their daughter at school is guaranteed by Title II/Section 504, and is separate and distinct from their daughter’s rights pursuant to the IDEA. The court (2-1 decision) held that the arguments advanced by the parents in support of the service animal (to increase the child’s independence and mobility) were related to the provision of education services, and were subject to the IDEA’s exhaustion requirements.

3. ***C.C. by Ciriacks v. Cypress Sch. Dist., 56 IDELR 295 (C.D. Cal. 2011).*** The court ordered the school district to permit a six-year-old boy with autism to bring his service dog, “Eddy,” to school. The dog was specially trained to calm the boy to reduce his self-stimming, aggressive behaviors, and eloping. Even though the school district would have to assign an aide to learn how to issue commands to the dog, provide the dog with water, and tether/untether the animal occasionally, these concerns did not amount to a “fundamental alteration” of the program or services provided by the district. These functions/responsibilities were merely “reasonable accommodations” required by Section 504/Title II.
4. ***Gates-Chili Cent. Sch. Dist., 65 IDELR 152 (DOJ 2015).*** A New York school district violated Section 504/Title II when it refused to provide “reasonable accommodations” to assist an elementary student with disabilities in handling her service animals. This student is nonverbal, and is diagnosed with Angelman syndrome, autism, epilepsy, asthma, and hypotonia. The child’s mother paid more than \$40,000 over four years for an adult handler for her child’s service dog. The child was also provided with an adult aide by the school district, but this aide was not permitted to handle the dog. DOJ found that the district’s refusal to provide an aide to assist the child in handling her dog was a violation of law. This type of service constituted a “reasonable accommodation” that is required by Section 504/Title II.
5. ***In re: Student with a Disability, 65 IDELR 57 (SEA IL 2014).*** A school district violated the parent’s rights by failing to convene an IEP team meeting to discuss the parent’s request for her second-grader with a seizure disorder to be accompanied at school by a service animal. Despite reports that the service dog was aggressive and improperly trained, the district failed to convene an IEP meeting for two months, violating the parent’s right to meaningful participation in the development of her son’s IEP and a denial of FAPE.
6. ***Grand Rapids (MI) Pub. Schs., 115 LRP 10965 (OCR 2014).*** Schools cannot use allergies of staff or students to justify a decision to ban a service dog from the building. OCR opined that a charter school was required to accommodate the service dog AND the needs of students and/or staff who suffered from allergies to pet dander by assigning them to different locations within a room or facility.

7. ***In re: Student with a Disability, 114 LRP 32419 (OCR 2014).*** The parent of a student with a peanut allergy complained that the school district required her child to present information about her allergy and her service dog's certifications during four assemblies, and dis-enrolled the child when she attempted to bring the service dog to class. The district resolved the complaint with OCR by agreeing to revise its policies regarding service animals and provide system-wide training to staff responsible for developing Section 504 plans.
8. ***Scott City (MO) R-1 Sch. Dist., 114 LRP 36301 (OCR 2014).*** A Missouri school district resolved a complaint from the parent of a middle school student. The parent alleged that the school principal refused to permit her to enter the school building accompanied by her service animal when she came to deliver her son's medication to school. The school district agreed to comply with Section 504/Title II in the future and to refrain from barring entry for service animals.
9. ***School Administrative Unit #23 (NH), 62 IDELR 65 (OCR 2013).*** A New Hampshire school district resolved an OCR complaint by agreeing to hire a trainer for a seizure-alert dog, and to hire and train at least two adult aides to handle the animal at school.
10. ***Catawba County (NC) Schools, 61 IDELR 234 (OCR 2013).*** The school district violated Section 504/Title II of the ADA by refusing to permit a three-year-old boy with fetal alcohol spectrum disorder and aggression to bring his service dog to school. The dog was trained to re-direct aggressive and self-injurious behaviors by lying beside the child and calming him, and retrieved the child if he eloped. OCR found that the dog's functions would not interfere with his IEP goals and objectives, but would assist him in reaching these goals by reducing his aggression and the need for adults to intervene. OCR found no evidence that the presence of the dog would constitute a "fundamental alteration of the programs or services" of the school district.
11. ***Pasadena (CA) Unified Sch. Dist., 60 IDELR 22 (OCR 2012).*** The parent of a high school student with a visual impairment alleged that district officials violated Section 504/Title II by declaring in an IEP meeting that the use of a service dog at school "would not be possible." OCR found that an orientation and mobility expert at the meeting made the comments. These experts opined that the student's lack of orientation and mobility skills would preclude him being able to handle a guide dog at school. OCR opined that it is not a violation of Title II for district personnel to express professional opinions as to whether a student is a good candidate for a service animal.
12. ***Jackson County (MI) Intermediate Sch. Dist., 59 IDELR 172 (OCR 2012).*** The school district proposed an IEP for a six-year-old girl with cerebral palsy that included a 1:1 aide and other related services. The parent of the child obtained a service animal to provide assistance to the girl. Afterwards, the school district determined that the girl did not require the provision of a service dog to receive a



“free appropriate public education” and refused to permit the dog at school. OCR found that the refusal to permit the child to bring her service animal to school was a violation of federal, and that this right was not dependent on a child’s need for FAPE.

13. *In re: Student with a Disability, 57 IDELR 236 (SEA FL 2011).* An ALJ ruled that the school district was not obligated to permit a six-year-old boy with seizures and a behavioral disorder to bring his service dog to school. The judge ruled that the child’s teachers were able to deal with the child’s behavior problems and health needs just as well as a dog. The ALJ also held that the presence of the dog would be a distraction to other children, that the dog’s presence would hinder the child’s development of independence, and that the dog’s presence might be harmful to the teacher who had an allergy to pet dander. **THIS DECISION WAS REACHED PRIOR TO THE EFFECTIVE DATE OF THE 2011 DOJ REGULATIONS ON SERVICE ANIMALS.**

## **VII. QUESTIONS ABOUT SERVICE ANIMALS**

1. Will these requests become the basis for IDEA/504 lawsuits? When could the provision of a dog or miniature horse become part of FAPE as a related service, and therefore the responsibility of the school system?
2. When does the presence of a dog or miniature horse “fundamentally alter” the nature of services provided by schools?
3. Can schools require current veterinarian certificates of health and immunizations?
4. Can schools require parents of children with service animals to sign liability waivers?
5. What rights do parents of nondisabled children have if they object to the presence of a service animal in their child’s classroom/school?
6. Will schools be required to permit the presence of service animals at athletic events, assemblies, school dances, field trips, etc.?
7. Are schools required to pay for training a service animal? For buying a service animal?
8. Can schools require parents of children with service animals who are not able to care for/control the animal to attend school with their child for these purposes? Are schools required to provide aides to walk dogs/miniature horses?
9. Are schools required to provide staff training in the control/handling of a service animal?

10. What happens when rights collide? (e.g., one child needs a service dog and another child in the same class has a fear of dogs and suffers from PTSD; or a child or staff member has allergies that prevent his/her exposure to pet dander?)
11. How do schools respond to multiple requests for service animals in the same classroom/school? Is there a limit on the number of service animals in any one school?

## SAMPLE POLICIES AND PROCEDURES ON SERVICE ANIMALS IN SCHOOLS

The [ ] School System acknowledges its responsibility to permit students and/or adults with disabilities to be accompanied by a “service animal” in its school buildings, in classrooms, and at school functions, subject to the following. All requests for an individual with a disability to be accompanied by a service animal must be addressed in writing to the Superintendent of Schools at [address] at least ten business days prior to bringing the service animal to school or a school function.

### Requirements for Service Animals in Schools:

1. The animal must be a dog or, in specific circumstances, a miniature horse. *No other species of animal, whether wild or domestic, will be permitted in schools as a “service animal.”*
2. The animal must be “required” for the individual with a disability.
3. The animal must be “individually trained” to do work or a task for the individual with a disability.
4. **Special Provisions/Miniature Horses:** Requests to permit a miniature horse to accompany a student or adult with a disability in school buildings, in classroom, or at school functions, will be handled on a case-by-case basis, considering:
  - a. The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
  - b. Whether the handler has sufficient control of the miniature horse;
  - c. Whether the miniature horse is housebroken; and
  - d. Whether the miniature horse’s presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.
5. **Removal of a Service Animal:** A school administrator may ask an individual with a disability or his/her parents to remove a service animal from a school building, a classroom, or from a school function if any one of the following circumstances occurs:
  - a. The animal is out of control and the animal’s handler does not take effective action to control it; or
  - b. The animal is not housebroken.



- c. The animal's presence would "fundamentally alter" the nature of the service, program, or activity.
- 6. A service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control.
- 7. The school system is not responsible for the care or supervision of a service animal, including walking the animal or responding to the animal's need to relieve itself.

Reference: ADA Regulations, 28 C.F.R. Part 35 (as amended, 2011).