



Legal Questions about Service Animals in Schools

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Service animals seem to be everywhere these days, raising many practical and legal issues. In the public school context, state and federal laws govern whether a person has a right to use a service animal. In order to determine which rules apply, school officials must understand the basic legal landscape.

What is a service animal?

The Americans with Disabilities Act (ADA) defines a *service animal* as a 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.¹ The type of work that a service animal performs must be directly related to the person's disability.² In Texas, state laws define an *assistance animal* or *service animal* as a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability.³

Do service animals have to be specially certified or trained?

No. In fact, a district may not require documentation from a person with a service animal, including proof of certification, training, or licensure.⁴ State law also mandates that an assistance animal in training must not be denied access to any public facility when accompanied by an "approved" trainer; however, the law does not define who qualifies as an approved trainer.⁵ As such, districts should admit service animals in training as a general rule.

Requiring a person with a service animal to provide documentation may result in a claim of disability discrimination. The U.S. Department of Education Office for Civil Rights (OCR) determined that an Oregon school district discriminated against a parent with a service animal by requiring proof of insurance, vaccinations, and training documentation before she could continue to volunteer in her child's classroom. OCR found that these requirements effectively excluded the parent based on her disability, and it ordered the district to allow the parent to volunteer with her service animal unless it could cite to some legal justification to exclude the animal.⁶

¹ 28 C.F.R. §§ 35.104, .136(i).

² 28 C.F.R. § 35.104.

³ Tex. Hum. Res. Code § 121.002(1).

⁴ 28 C.F.R. § 35.136(f).

⁵ See HB 489, 83rd Leg., R.S., §§ 2, 3, amending Tex. Hum. Res. Code §§121.002(1), .003(i).

⁶ *Hillsboro (OR) Sch. Dist. 1J*, 59 IDELR 82 (OCR 2012).

While official documents are not necessary in order to establish a person's right to use a service animal, a district may use reasonable forms in order to facilitate the practical aspects of bringing a service animal onto campus on a regular basis. Sample forms are available from TASB Policy Service's online *Regulations Resource Manual* or upon request.

What questions can district employees ask about a service animal?

A district may 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: (1) whether the animal is required because of a disability; and (2) what work or task the animal has been trained to perform. Nonetheless, a district may not make these inquiries when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.⁷ For example, if an animal is clearly acting as a seeing-eye dog, then district employees should not question the animal's owner as a condition of granting access. If, however, the animal's function is not obvious, a district employee may ask the two questions above.

What access must be provided to an individual with a service animal?

Under the ADA, an individual with a service animal must be allowed to access all areas of a district's facilities where members of the public or participants in services, programs or activities are allowed to go.⁸ State law goes further, providing that no person with a disability may be denied admittance to any public facility because of the person's disability or may be denied the use of an assistance animal.⁹ Service animals must be allowed on district vehicles as well as other facilities.

Strictly speaking, only a trained dog meets the definition of a service animal under the ADA. However, the statute also requires public entities such as school districts to accommodate individuals who use miniature horses to assist with a disability.¹⁰ Four special factors apply when determining whether a miniature horse may be given access to a facility:

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.¹¹

⁷ 28 C.F.R. § 35.136(f); Tex. Hum. Res. Code § 121.003(l).

⁸ 28 C.F.R. § 35.136(b).

⁹ Tex. Hum. Res. Code § 121.003(c), (e), (i).

¹⁰ 28 C.F.R. § 35.136(i).

¹¹ 28 C.F.R. § 35.136(i).

Under what circumstances could a district deny access to a service animal?

District officials may ask an individual to remove a service animal from district property in two circumstances: (1) if the animal is out of control and the animal's handler does not take effective action to control it; or (2) if the animal is not housebroken.¹² The ADA does not require the district to accommodate an individual when he or she poses a direct threat to the health or safety of others.¹³ The determination that an animal poses a threat, however, should be made based on an individualized assessment relying on "current medical knowledge" or the "best available objective evidence."¹⁴ A service animal should not be excluded based on assumptions about the animal's size or breed but on observable evidence and verifiable medical concerns (such as a dog that appears foams at the mouth, appearing rabid).

How should service animals be treated?

Harassment, assault, interfering with or harming animals is strictly prohibited.¹⁵ When a service animal will be present in a classroom setting, particularly among younger students, educators may need to emphasize the difference between service animals and pets to ensure that students do not interfere with the animal's work.

What are the duties of the service animal's owner to care for the service animal?

It is not the district's responsibility to supervise a service animal or to provide for its care or feeding.¹⁶ A service animal must be under the control of its handler (usually the person with a disability) and must typically wear a harness, leash, or other tether.¹⁷ If the handler is unable to use a harness, leash, or other tether due to a disability or the use of these items would interfere with the service animal's work, the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).¹⁸

Districts are prohibited from charging a person with a service animal a fee to access district facilities. However, a district may charge the individual for damages caused by the service animal.¹⁹ A district would be in a stronger legal position to do so if it has a general policy or practice of charging for damages to facilities, since it would be discriminatory only to charge people with service animals for damages.

¹² 28 C.F.R. § 35.136(b).

¹³ 28 C.F.R. § 35.139; *see Rose v. Springfield-Greene County Health Dept.*, 668 F. Supp. 2d 1206 (W.D. Mo. 2009) (holding that monkey was not a service animal and Health Department conducted an individualized assessment to determine that it posed a health and safety threat).

¹⁴ 28 C.F.R. § 36.208(c); *see also Pena v. Bexar County*, 726 F. Supp. 2d 675, (discussing application of Title III regulations to a public entity's duty to accommodate individuals with service animals under Title II.)

¹⁵ Tex. Hum. Res. Code § 121.002, .003(j).

¹⁶ 28 C.F.R. § 35.136(e).

¹⁷ 28 C.F.R. § 35.136(d); Tex. Hum. Res. Code § 121.005.

¹⁸ 28 C.F.R. § 35.136(d).

¹⁹ 28 C.F.R. § 35.136(h).

What if a student is not capable of handling a service animal? Is the district obligated to provide a staff member to assist the student with the animal?

In most situations, no. If a child is unable to handle a service animal, then typically the parents must provide a handler. If a handler is not provided, then the service animal can be prohibited from coming to school.²⁰ An exception may apply if the district determines that the animal is necessary for a student with a disability to receive a FAPE. In Florida, a school district was required to assign a staff member to assist a student with a service dog when the dog needed to urinate. Although the student had severe disabilities, the court determined that he could serve as a handler because the dog could be tethered to his wheelchair. Staff assistance was, therefore, required as a reasonable accommodation under Section 504 rather than as “care and supervision,” which the ADA specifically states that districts are not required to provide.²¹ In a similar case, however, a court declined to order a New Hampshire school district to provide assistance, reasoning that the student, who was nonverbal and required assistance to walk, could not serve as the dog’s handler.²² School officials should consult with the district’s special education attorney when faced with this situation.

What about “comfort animals”?²³

The ADA specifically states that a service animal does not include an animal that is intended to increase an individual’s comfort or sense of well-being: “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.”²⁴ Distinguishing between service animals and comfort animals is not always easy, however.

Just as the nature of a person’s disability is not always visible to outsiders, the task(s) that an animal is trained to perform may not be obvious. Dogs may be trained to calm an individual during an anxiety attack; prevent compulsive or destructive behaviors; remind someone with an intellectual disability when to take medication; assist with balance or stability; and alert to the onset of a seizure or the presence of allergens.²⁵ When in doubt, ask the two permitted questions. If the animal merely provides a general sense of comfort unrelated to a disability, then the animal does not meet the definition of a service animal under the ADA.

²⁰ See 28 C.F.R. § 35.136(d).

²¹ *Alboniga ex rel. A.M. v. Sch. Bd. of Broward Cnty., Florida*, 87 F. Supp. 3d 1319 (S.D. Fla. 2015).

²² *Riley v. Sch. Admin. Unit #23*, Civil No. 15-cv-152-SM, 2016 WL 183525 (D.C.N.H. Jan. 14, 2016).

²³ In this article, the terms “comfort animal” and “emotional support animal” mean the same thing (i.e., not a service animal).

²⁴ 28 C.F.R. § 35.104.

²⁵ 28 C.F.R. § 35.104; see e.g. *K.D. v. Villa Grove Comm. Unit Sch. Dist. No. 302 Bd. of Educ.*, 936 N.E. 2d 690 (Ill. App. 2010) (affirming under state law that dog was service animal individually trained to perform tasks for benefit of autistic elementary school student, including preventing student from running away, calming during temper tantrums and promoting individual mobility.)

In the context of district employees and students, the inquiry should not stop there. While emotional support animals are not service animals as defined by the ADA, they may be permitted as a reasonable accommodation under other law.²⁶

For example, Title I of the ADA requires public employers to offer reasonable accommodations to employees with disabilities and is silent as to service animals. (The detailed regulations for service animals come from Title II of the ADA, which addresses public facilities generally.) Thus, when an employee with a disability has a comfort animal, the district should engage in an interactive process with the employee and consider whether to allow the comfort animal as a reasonable accommodation. If not, the district should offer an alternative accommodation. It may be necessary to explain to the employee that Title I of the ADA does not require an employer to grant the specific accommodation requested.

Similarly, when a student has a service or comfort animal, the district should consider whether the animal is necessary in order to provide a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act or the Individuals with Disabilities in Education Act (IDEA).²⁷ In 2008, OCR found that a California district violated the ADA and Section 504 by failing to consider the impact on whether a student would receive FAPE before excluding the student's dog from school.²⁸ In another case, a federal court in Arkansas refused to issue an order requiring a district to allow a student with anxiety attacks to bring a service animal to school, because the student's 504 team had determined that the dog was not a reasonable accommodation under the circumstances.²⁹ While the legal outcome of a complaint in this area is uncertain, decisions about accommodations for students with disabilities should clearly go through the IDEA or 504 process.

What if other people are allergic to the service animal?

Allergies or fear of animals are generally not valid reasons to deny a service animal.³⁰ The U.S. Department of Justice advises that if a person afraid or allergic to a service animal must spend time in the same room or facility as a person who uses a service animal, such as might occur in a classroom, both individuals should be accommodated by assigning them to different rooms in the

²⁶ See Fed. Reg., Vol. 75, No. 178 at 56166 (Sept. 15, 2010) (citing *Overlook Mutual Homes, Inc. v. Spencer*, 666 F. Supp. 2d 850 (S.D. Ohio 2009) for the proposition that "emotional support animals that do not qualify as service animals under the Department's title II regulations may nevertheless qualify as permitted reasonable accommodations for persons with disabilities" under the Fair Housing Act and the Air Carriers Access Act).

²⁷ See 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (generally defining FAPE under IDEA as special education and related services provided at public expense in accordance with a student's IEP); also see 34 C.F.R. § 104.33(a) (requiring a recipient of federal funds that operates a public education program to provide a FAPE to each qualified person with a disability in the entity's jurisdiction, regardless of the nature or severity of the person's disability.)

²⁸ *Bakersfield (CA) City Sch. Dist.*, 50 IDELR 169 (OCR 2008).

²⁹ *Pettus ex rel. K.P. v. Conway Sch. Dist.*, CASE NO. 4:18-CV-00872 BSM, 2019 WL 1109685 (E.D. Ark. Jan. 2, 2019).

³⁰ See *Doe v. U.S. Sec'y of Transp.*, 17-CV-7868 (CS), 2018 WL 6411277 (S.D.N.Y. Dec. 4, 2018) (finding no duty to provide a dog-free school for student with allergies).

same facility or different locations in the room.³¹ Educators and administrators must find a way to meet both needs in this tricky situation. The district should attempt to find a solution that does not penalize either the person with the service animal or the person with fears or allergies.

Conclusion

Faced with these complex issues, Texas school officials may well agree with the notion that, “[o]ne person’s emotional support can be another person’s emotional trauma.”³² When in doubt, have an open mind, keep channels of communication open, and don’t forget to seek legal advice when things get hairy.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/community/documents/legal-questions-about-service-animals-in-schools.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

³¹ See U.S. Department of Justice, Civil Rights Division, [2010 ADA Guidance](#).

³² Marx, Patricia, “Pets Allowed,” *The New Yorker* (Oct. 20, 2014).