

**Client Advisory
February 2011**

**NEW ADA Regulations Regarding the Presence and Use of Service
Animals in Local Governmental Buildings and Programs, Including Public
Schools:**

**All Local Governments and Public Schools Must Have Policies in Place by
March 15, 2011**

For a discussion of these and other legal issues, please visit the update on our website at www.mhtl.com. To receive legal updates via e-mail, contact information@mhtl.com.

On September 15, 2010, the U.S. Department of Justice published its final regulations governing the use of service animals in local governmental programs and buildings, including public schools. These regulations amended Title II of the Americans with Disabilities Act (“ADA”), and can be found at 28 CFR Part 35.

These new regulations require local governments, including school districts, to publish a policy that is in line with the regulations, and which provides notice on the presence and use of service animals to aid disabled individuals in government buildings and programs. As these new regulations leave many terms undefined, they are likely to lead to many questions, as local governments and school districts move forward to comply. The regulations provide rights to employees, students, and those members of the public accessing governmental services or programs.

Some basic elements of the new regulations about which our municipal and school clients need to be aware include:

- * The term “service animals” is defined under the regulation as “any dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability.” However, the ADA regulations also state that “[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 horse has been individually trained to do work or perform tasks for the benefit of the individual with the disability”. 29 CFR 35.136(i). (Emphasis added).
- * The term “individually trained” is not defined, leaving open the possibility that even minimal informal “training” may be sufficient.

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- * The task performed by the service animal must address one of the following needs for the disabled individual: physical, sensory, psychiatric, intellectual and other mental disability. The service animal can be excluded from a municipal building or school or program if its purpose is to act as a deterrent to assaultive behavior, bullying or other misconduct, or to provide emotional support and companionship to the disabled individual.
- * No particular breed of dog can automatically be excluded solely based on the perceived characteristics of the breed. Also, there are no weight or size limitations for the service dog.
- * There are two circumstances under which a service animal can be excluded from a governmental building or school or program: if the animal is not under the handler's control, or if it is not housebroken. In addition, under the standards of the ADA generally, a service animal can be excluded if the service animal presents a direct and immediate threat to others in the governmental building or school, which, of course, would be tantamount to not being under the handler's control.

While the regulations provide more guidance than what is presented in this client advisory, many questions remain, such as: may local governments and school districts require that the animal be appropriately vaccinated; must a school district allow a service animal if the IEP Team believes it has addressed the student's needs and FAPE entitlement through the IEP without the use of a service animal; and, what happens when the right of a disabled individual to bring a service animal into the government or school building or program adversely impacts another disabled individual with allergies to animals?

To receive assistance with this new legal requirement, as well as guidance on creating a policy and providing staff training, please contact Alisia St. Florian at (617) 479-5000 or astflorian@mhtl.com. In addition, feel free to contact the attorney(s) who regularly represent you.

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