

Service Animals in Schools – A New Federal Rule

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In September 2010, the U.S. Department of Justice issued new regulations under the part of the Americans with Disabilities Act that applies to school districts and other public entities. Most of the new regulations relate to architectural and communications barriers. The regulations also address an issue of particular interest to school districts: service animals. Like most rules, this one has two key components: a definition and a command.

The Definition

Service animal means any dog that is **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 ... 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.

The definition goes on to provide examples of canine work that brings a dog within the definition of a service animal:

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 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.**

Conversely, the definition lists kinds of canine work that do not qualify a dog as a service animal:

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.**

The Command

With that definition in mind, the regulation states that:

(a) 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. The command includes a mildly-worded exception, as follows:

(b) 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.

The regulation also limits the dialog between a school and a family, as follows:

(f) 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).

The regulation also makes clear that the animal must be under the handler's control and that the public entity is not responsible for supervising the animal. Lastly, perhaps to make us grateful when the only animals that we have to deal with are dogs, the regulation includes rules for allowing the use of miniature horses—if they have been individually trained to perform tasks for the benefit of the individual with a disability.

A Few Unanswered Questions

The new regulation raises at least three issues.

- Is a school district permitted to take into account the allergic reactions of other students? The language of the regulation (which was written with all public entities and properties, not just schools, in mind) does not suggest any flexibility or balancing on this issue. It does, however, begin with the word "Generally," which implies that specific factors may come into play in particular cases.
- How should a school district distinguish between a service animal and an emotional support dog? The regulation draws a line between: (a) dogs that assist persons with psychiatric disabilities by preventing or interrupting impulsive or destructive behaviors (in which case the public agency must permit the dog), and (b) dogs that provide emotional support, well-being, and comfort (in which case the public agency need not permit the dog). Consistent with this distinction, the federal commentary refers to "emotional support animals that do not qualify as service animals." In practice, drawing this line may be difficult and contentious. The deciding factor is likely to be whether the dog has been specifically trained to prevent or interrupt impulsive behaviors. This is because of the emphasis, in the definition section of the regulation, on the individual training of the dog. If a school district seeks to become knowledgeable about the training of the dog, the regulation permits the public agency to ask the individual about the dog's training, but prohibits the public agency from requiring documentation of such training. Thus, a school district may be forced to make a decision without having all of the existing information.
- Can the student's right under the IDEA to be accompanied by an animal exceed their right under the ADA? We can expect that the ADA rule will be applied also under Section 504 of the Rehabilitation Act. However, the more significant issue is the relationship between this ADA rule and the special education law – the IDEA.

The federal commentary on the ADA rule does not mention the IDEA; however, the official commentary states that other statutes might provide more rights or encompass more animals. Consider a hypothetical case in which a parent wants their child with an emotional or attentional disability to be accompanied by an emotional support dog who will, according to the

parent and perhaps others, positively influence the child's off-task behavior by providing comfort and continuity. In such case, a parent might argue that their child must be allowed to bring such an animal to school as a matter of what constitutes individualized appropriate education under the IDEA, even if they are not entitled to do so under the ADA or Section 504. The new ADA regulation makes it harder for a parent to succeed with such an argument, and a school district may be inclined to say that it need not accommodate an animal under the IDEA if it is not required to do so under the ADA; but it is too soon to say that the new ADA regulation answers all questions.

Conclusions

School districts now have fairly specific regulations regarding the rights of students to bring service dogs (and miniature horses) to school with them. When parents and schools have competing versions of what the animal contributes to the student's education -- resulting in different views on whether a dog is truly a service animal that the student can choose to accompany them to school -- the specific training of the animal is likely to be the deciding factor under the ADA and Section 504.

The new ADA regulation supports students with service dogs more than ever. The regulation answers some questions in this area, but not all of them. Thus, school districts need to be aware of the definition and the command in the new regulation and be prepared to interpret that regulation -- subject, of course, to a parent's challenge. Because the regulation regarding service animals is not limited to students with IEPs, general school staff, not just special education staff, should be aware of the regulation.

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