

Service Animals & Other Controversial Accommodations

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INTRODUCTION

- Neither the IDEA nor Section 504 specifically address whether students with disabilities have the right to be accompanied by service animals on school grounds.
- 2010 amendments to Title II regulations implementing ADA clarify some of the requirements for service animals
- Requirements take effect March 15, 2011



SERVICE ANIMAL DEFINED

- “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 purposes of definition



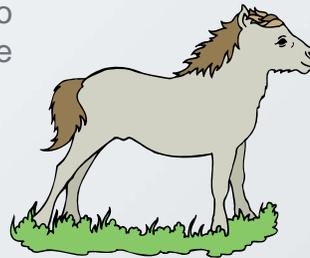
SERVICE ANIMAL DEFINED

- Work or tasks performed service animal must be directly related to handler’s disability
- Examples: assisting blind individuals, alerting deaf individuals, providing protection/rescue work, pulling wheelchair, etc.
- Crime deterrent effects of animal’s presence and provision of emotional support, well-being, comfort, or companionship, do not constitute work or task for purposes of the definition



SERVICE ANIMAL DEFINED

- Although definition is limited to dogs, public entities must also 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 individual's benefit



SERVICE ANIMAL DEFINED

- Considerations ?
 - Type, size, and weight of miniature horse, and whether facility can accommodate those features
 - Does handler have sufficient control of miniature horse?
 - Miniature horse housebroken?
 - Does miniature horse's presence in facility compromise legitimate safety requirements necessary for safe operation?



SERVICE ANIMAL DEFINED

- Emotional support animals do not qualify as service animals as defined by Title II regulations
- DOJ has stated that such animals may be permissible reasonable accommodation under other laws
- Emotional support animal might qualify as reasonable accommodation if necessary for student to receive FAPE even though it would not meet Title II definition



SERVICE ANIMAL DEFINED

Psychiatric Service Animal

- Remind individual to take medication
- Perform safety checks/room searches
- Interrupt self-mutilation
- Remove disoriented individuals from dangerous situations

Emotional Support Service Animal

- Comfort
- Companionship



TITLE II-GENERAL RULES FOR USE OF SERVICE ANIMALS

- Public entities required to modify policies, practices, and procedures to permit use of service animals by individuals with disabilities
- May ask to individual with disability to remove service animal from premises if:
 - Animal is out of control
 - Animal is not housebroken



TITLE II-GENERAL RULES FOR USE OF SERVICE ANIMALS

- Service animal must be under the control of its handler
- Must have harness, leash, or other tether, unless
 - Individual because of disability is unable to use harness or
 - Use of harness would interfere with service animal's safe, effective performance of work or tasks



TITLE II-GENERAL RULES FOR USE OF SERVICE ANIMALS

- Public entities must allow individuals with disabilities to be accompanied by service animals in all areas of facilities open to public
- May not require individual with disability to pay a surcharge even if it requires individuals with pets to pay a fee
- May charge individual with disability for any damage caused by a service animal



TITLE II-INQUIRIES ABOUT SERVICE ANIMAL QUALIFICATIONS

- Public entities may not ask about nature or extent of individual's disability, may ask whether animal is required because of disability and about work or task animal is trained to perform
- May not ask these questions when it's readily apparent that animal is trained to do work or tasks for individual with disability (eg. seeing eye dog)
- May **not** require documentation of animal's status as service animal under **any** circumstance



USE OF SERVICE ANIMALS IN SCHOOLS-FAPE Considerations

- Number of courts and hearing officers have held that students with disabilities are not entitled to bring service animals to school if the animal's presence is not necessary for student to receive FAPE
- **BUT:** School districts should avoid excluding service animals outright without considering specifics of student's situation



USE OF SERVICE ANIMALS IN SCHOOLS-State Law Considerations

- State law may give students with disabilities the right to be accompanied by service animals on campus
- **Examples:** Illinois law allowed 5-year old boy with autism to bring his service dog to school (*Kalbfleisch v. Columbia Community Unit Sch. Dist. Unit No. 4*, 53 IDELR 266 (Ill. App. Ct. 2009))



**DISCUSSION OF OTHER
SIGNIFICANT CASES
REGARDING SERVICE
ANIMALS**



**DEALING WITH OTHER
CONTROVERSIAL
REQUESTS**



Key Strategies to Discuss Services Without Straining Parent Relationships

- **Don't just say "no"**- If parents choose a certain ask them to explain why they think their child needs that service
- **Explain why a service isn't necessary**- explain to parents that service should help a student make educational gains
- **Propose a future meeting**- If IEP team determines that a service a parent requests is not necessary or that another is more appropriate, tell parent you will monitor child's progress over coming weeks



Key Strategies to Discuss Services Without Straining Parent Relationships

- **Designate particular time to discuss services**- give parents an agenda of IEP meeting so they know the order things will be discussed designating certain portions of the meeting to discuss services



Collect, Share Data With Parents - Private Services Request

- **Collect and review data-** if your data is up-to-date, are collected regularly, and demonstrate steady and reasonable progress, it will not be logical to conclude the child's academic success is based on an outside service
- **Investigate purpose of service-** question whether child needs the related service to benefit from his special education
- **Visit private provider-** consider having a team member visit the provider to see whether the child truly exhibits progress reported by parents



Collect, Share Data With Parents - Private Services Request

- **Send home frequent progress reports-** send home daily folders that indicate what child did each day to work towards his goals and objectives
- **Provide service only if necessary for FAPE-** once you start funding a service, it's hard to stop
- **Consider offering similar service in district-** may be able to fashion service in a similar manner as parent's preferred private school



Ask 5 Questions When Parents Request Related Services

- **Do we have enough information about the service?** Be prepared to research related services prior to convening an IEP meeting; research what service is and proposed benefits
- **Why does the parent want the service?** Ask parents at IEP meeting why they think service is necessary to help their child reach her IEP goals
- **Has the child made progress without the service?** Question whether the child makes progress on his IEP



Ask 5 Questions When Parents Request Related Services

- **What are the consequences of providing the service?** Try to anticipate potential consequences of agreeing to the service; determine whether there are safety issues
- **Don't rule out parent counseling, training as related service.** To help a child meet his IEP goals, districts may also provide parent counseling and training as a related service



DEFINING RELATED SERVICES UNDER IDEA AND SECTION 504



IDEA Definition of Related Service

- **“Related Service”**: “developmental and other supportive services as are required to assist a child with a disability to benefit from special education”
- Part B:
 - Audiology
 - Counseling services
 - Early identification and assessment of disabilities in children
 - Interpreting services
 - Medical services
 - Occupational therapy
 - Orientation and mobility services



IDEA Definition of Related Service

- Parent counseling and training
- Physical therapy
- Psychological services
- Recreation
- Rehabilitation counseling services
- School health services and school nurse services
- Social work services in schools
- Speech-language pathology services
- Transportation



OTHER RELATED SERVICES

- **List of related services not exhaustive**
- **Leisure and Recreation:** may be necessary related services for students with disabilities
- **Interscholastic Sports and Extracurricular Activities:** an IEP team has to determine that such participation is a necessary component of FAPE for that student and include participation as a specific component of the IEP



OTHER RELATED SERVICES

- **Limitations on Age or Semester in Athletic Participation:** participation generally cannot be barred by otherwise applicable age or time limitations
- **Mapping of Cochlear Implants:** is expressly not a related service under IDEA 2004
- **Use of SIBIS Devices:** use of self-injurious behavior inhibiting system (SIBIS) device may be a related service for a student with autism when that disability results in self-injurious behavior



OTHER RELATED SERVICES

- **Family Lodging Costs:** reimbursement of family lodging/visitation costs may be a related service for families of student who attend residential placements
- **Travel Training/Orientation and Mobility Devices:** travel training is not a related service but is a term of art for a particular type of special education programming generally appropriate for children with cognitive disabilities
- **Speech Therapy:** may be a related service for a student whose speech impairment does not have a significant adverse effect on educational performance



HEALTH CARE RELATED SERVICES

“Medical Services” IDEA Definition

- “Services provided by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and other services.”



“Medical Services” 504 Definition

- Health services can be delivered by a school nurse or other appropriately trained personnel, such as administration of medication, may be required related aid or service, if necessary for student with disability to effectively participate in educational program

HEALTH CARE RELATED SERVICES

- **Supreme Court’s Role in Defining Medical Services:** SCOTUS adopted bright-line rule for distinguishing excluded medical services from health-care related supportive services that are the responsibility of the school district under the IDEA (*Irving Indep. Sch. Dist. v. Tatro*)
- **Medically Fragile Students:** a student requiring intensive and prolonged health care as a result of a catastrophic medical event or congenital condition



HEALTH CARE RELATED SERVICES

- **The Multifactor Approach:** takes into account whether the care was required on a continuous or intermittent basis, whether school health personnel could perform the service or if additional personnel needed to be hired, whether the cost of the service was significant, and if the failure to perform the service properly could have severe, even fatal consequences
- **Vision Therapy:** is likely to be the school district's responsibility if needed to assist with the child's educational needs and if it does not require administration by a physician



Student Allergies to Substances in the School Environment

- **Allergy as a Disability:** When a parent claims a student has a disability on the basis of an allergy, the FAPE procedures and entitlements of Section 504 regulations may apply
- **Determining Appropriate Actions:** a district must take all reasonable steps to ensure that a student with a disability is provided with an equal opportunity to participate in, and benefit from, an educational program as effective as that provided to non-disabled students



Student Allergies to Substances in the School Environment

- Districts do not need to provide unreasonable or unnecessary accommodations to a student with allergies.
- A district cannot exclude a student from a program or class in which he would be exposed to allergens without first determining whether it can accommodate the student.



Student Allergies to Substances in the School Environment

- **Compliance Requirements Regarding No-Fragrance Policies:** neither OCR nor any court in a published decision has addressed this issue in a general way; OCR would likely interpret Section 504 as imposing a compliance requirement
- **Scent-Free Policies:** a student with a disability could be entitled to a mandatory scent-free environment



Student Allergies to Substances in the School Environment

- **ADA Amendments Act:** “definition of disability in the Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act”
- **“Major life activities”:** more activities have been included in the non-exhaustive list
- Expanded definition of “individual with a disability,” so it is possible that school districts will see an increase in requests for accommodations

