

# Service Animals in Public Schools: “Who Let the Dogs Out?”

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Why do public schools have to deal with the issue of service animals in the schools?

The Americans with  
Disabilities Act (ADA)  
prohibits discrimination  
against a qualified individual  
with a disability.

**Title II of the ADA prohibits  
discrimination against a  
qualified individual with a  
disability by public entities.**

Title II regulations define “public entity” as any state or local government, or any department, agency, special purpose district, or other instrumentality of state or local government.

Public school districts are a form of local government under Title II of the ADA.

Public schools must comply with Title II of the ADA.

Under Title II regulations, a qualified individual with a disability is one “who with or without reasonable modifications to rules, policies and practices ... or the provision of auxiliary aids and services, meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by a public entity.” 28 C.F.R. § 35.104.



# Rules, policies and practices . . .

If rules, policies and practices currently prohibit animals in school, Title II will require reasonable modification to those if a student wants to bring a service animal to school.



A public school student is protected from discrimination on the basis of his or her disability in public school by

- Section 504
- Title II ADA

Section 504 applies to all students who receive special education services under the IDEA, as well as those who are eligible for protection from discrimination under Section 504 only.

# Schools are used to complying with

- IDEA – special education students
- Section 504 – Section 504 only students

But OCR will apply Section 504 and ADA Title II requirements (which should be comparable and consistent) to both IDEA and Section 504 only students.

# SERVICE ANIMALS

- Neither the IDEA nor Section 504 specifically address whether students with disabilities have the right to be accompanied by service animals on school grounds.
- 2011 amendments to Title II regulations implementing ADA, which apply to public schools, clarify some of the requirements for service animals.

# SERVICE ANIMAL DEFINED

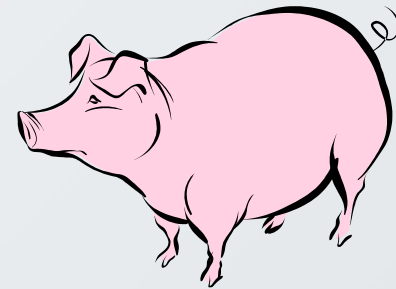
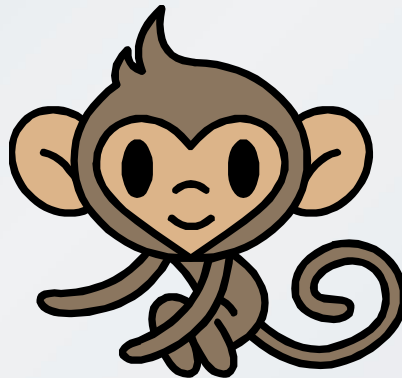
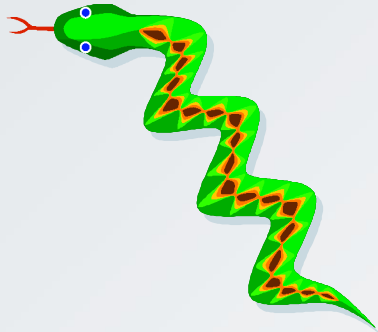
- “Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability”.

28 C.F.R. § 35.104



# SERVICE ANIMAL DEFINED

- Other species of animals are not service animals for purposes of definition.



# SERVICE ANIMAL DEFINED

- Work or tasks performed by service animal must be directly related to individual's disability.
- Examples: assisting blind individuals to navigate and other tasks; alerting deaf individuals to presence of people or sounds; providing nonviolent protection/rescue work; pulling wheelchair; assisting individual during a seizure; alerting to presence of allergen; retrieving items such as medicine or telephone; providing physical support and assistance with balance and stability; helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behavior.

28 C.F.R. § 35.104



# SERVICE ANIMAL DEFINED

- 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.

28 C.F.R. § 35.104

# 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.

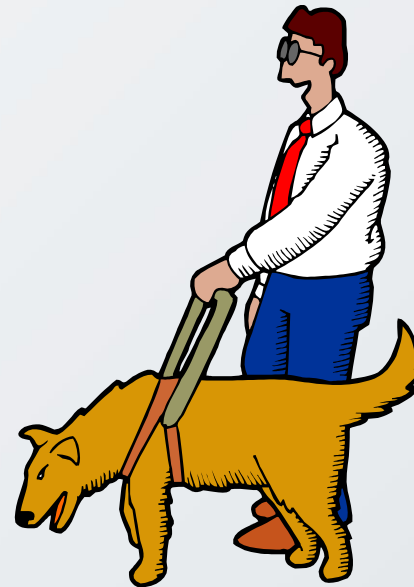
# SERVICE ANIMAL DEFINED (DOGS)

## 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 entity not responsible for animal's care and supervision
- Public entities “shall modify” policies, practices, and procedures to permit use of service animals by individuals with disabilities
- May ask individual with disability to remove service animal from premises if:
  - Animal is out of control and handler does not take effective action to 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 and
  - Service animal is otherwise under control



# 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 the entity requires individuals with pets to pay a fee.
- May not apply requirements generally not applicable to people with pets.
- May charge individual with disability for any damage caused by a service animal if such charges are normally assessed.

# TITLE II-INQUIRIES ABOUT SERVICE ANIMAL QUALIFICATIONS

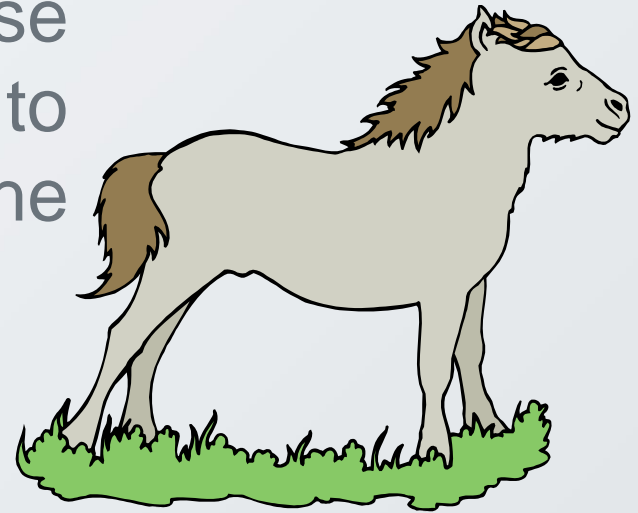
- Public entities may not ask about nature or extent of individual's disability, may ask whether animal is required because of disability and about work or task animal is trained to perform.
- May not ask these questions when it's readily apparent that animal is trained to do work or tasks for individual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



# MINIATURE HORSES

- Not within definition of service animal, which is limited to dogs.
- But 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.

28 C.F.R. § 35.136(i)





# MINIATURE HORSES

- Considerations of whether reasonable modification can be made to policies, practices & procedures.
  - Type, size, and weight of miniature horse, and whether facility can accommodate those features.
  - Does handler have sufficient control of miniature horse?



# MINIATURE HORSES

- Miniature horse housebroken?
- Does miniature horse's presence in facility compromise legitimate safety requirements necessary for safe operation?

28 C.F.R. § 35.136(i)



# MINIATURE HORSES

- If a facility will accommodate miniature horse:
  - It must be under handler's control.
  - It must be on a harness, leash or other tether; unless handler cannot handle the restraint, or the restraint would interfere with the miniature horse's safe and effective performance of work or tasks.
  - If so, it must be under control through voice or signals or other effective means.

28 C.F.R. § 35.136(i)

# MINIATURE HORSES

- School is not responsible for care or supervision.
- School may ask if miniature horse is required because of a disability.
- School may ask what work or tasks miniature horse has been trained to do.

28 C.F.R. § 35.136(i)

# 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**: Most of these cases were decided before the Title II regulations in March 2011.



# IS A SERVICE ANIMAL PART OF FAPE?



# IDEA

## ARD Committee determines related services

- Transportation and
- Other developmental, corrective and supportive services
- As are required to assist a child with a disability to benefit from special education

34 C.F.R. § 300.34(a)

# IDEA

## IDEA has a long list of related services

- It does not mention service animals
- It is not an exhaustive list
- Orientation and mobility services may include teaching children, as appropriate, to use a long cane or service animal to assist with travel.

34 C.F.R. § 300.34(a)(7)(ii)



# IDEA

An appropriate education must  
be at no cost to the parents

# IDEA

If a service animal is not a required related service, can the student bring the service animal to school anyway?

# ADA Title II

Generally, a public entity shall modify its policies, practices and procedures to permit the use of a service animal ...

35 C.F.R. § 35.136

# Section 504

FAPE – Regular or special education and related aids and services designed to meet individual educational needs of the student with a disability as adequately as the needs of nondisabled individuals are met.

34 C.F.R. § 104.33(b)

# Section 504

Is the service animal required to provide the student with FAPE?

# Section 504

If the service animal is not required to provide FAPE, can the student bring the service animal to school anyway?

# ADA Title II

Generally, a public entity shall modify its policies, practices and procedures to permit the use of a service animal ...

35 C.F.R. § 35.136

# 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:** Because of Illinois law, 5-year old boy with autism allowed to bring his service dog to school (*Kalbfleisch v. Columbia Community Unit Sch. Dist. Unit No. 4*, 53 IDELR 266 (Ill. App. Ct. 2009))





# COURT AND HEARING OFFICER DECISIONS



# **2007 New York Cave v. East Meadow Union Free School District**

New York district provided sign language interpreter, note taker and FM transmitter. Sufficient to accommodate hearing impaired student. School did not have to allow dog.



# **2009 Florida Collier County School District**

No requirement to allow dog whose purpose was to comfort student in the event of a seizure. Service could be performed by aide.



# **2008 OCR Opinion California (January) Bakersfield (CA) City School District**

- OCR did not determine whether dog qualified as a service animal.
- Found school violated Section 504 and ADA Title II by unilaterally denying it as a health & safety risk to others.
- School did not review dog's training, function or impact on student's education.



- Parent should have been allowed to bring Section 504 challenge (grievance or Section 504 hearing) on denial of service animal.
- Even if dog did not qualify as service animal, district should have considered whether it was necessary for student to receive FAPE.

# 2010 Colorado OCR Opinion

OCR found against district when it barred a dog from school after student had attended with it for years.

- Banned because teacher allergic
- District claimed it was not a service animal

# 2010 Colorado OCR Opinion (continued)

- IEP team never considered whether dog should be part of IEP or whether it was a service animal.
- Failure of IEP team to meet and consider whether dog should be part of IEP violated FAPE.

# 2010 Pennsylvania OCR Decision

District violated 504

- IEP team met about request to use dog
- IEP team considered severe allergies of some students to dogs
- But IEP team should have thoroughly explored dog's impact on student's safety, adaptive behavior and ability to meet social and behavioral goals



# 2010 Pennsylvania OCR Decision (continued)

Corrective action accepted by OCR:

- Convene multidisciplinary team to consider dog as a component of special education placement and services.
- Will consider information from a variety of sources regarding the dog.
- Information will be documented and carefully considered.

# 2010 Pennsylvania OCR Decision (continued)

- Placement decisions will be made by group of knowledgeable persons, including knowledge about use of trained animals.
- Will consider appropriate program and placement including use of dog.
- If dog is required, it will be included in IEP.
- Provide notice of procedural safeguards including how to challenge decision regarding the dog.

# 2011 OCR Decision California (June)

District court in California granted injunction to require district to allow dog to go to school with child with AU

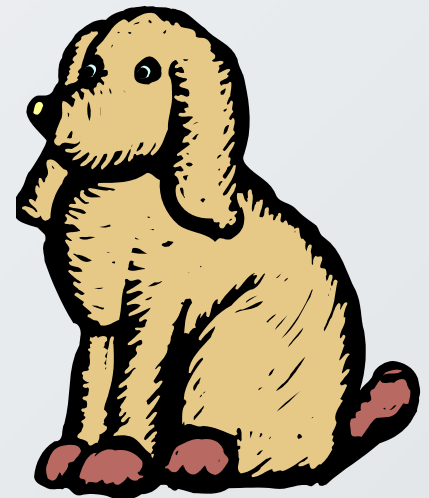
- Specially trained and qualified as a service dog.
- Fact that it also provided emotional support did not negate service dog status.

# 2011 OCR Decision California (continued)

- Presence was a reasonable accommodation for student under Section 504.
- Dog not likely to fundamentally alter school program.
- Also, child likely to suffer irreparable harm.

# WHAT ABOUT OTHERS?

- Students allergic to dogs
- Adults allergic to dogs



# *Grand Rapids (MI) Pub. Schs., 115* **LRP 10965 (OCR 2014)**

- Parent, who had a visual impairment, claimed that the school's principal, citing the presence of students with allergies and lack of proof that the dog was a service dog, told the parent to remove his service dog from the building. The parent complained of disability discrimination. OCR noted that under Title II of the ADA, districts cannot require proof that an animal has been certified, trained, or licensed as a service animal.
- OCR further emphasized that accommodating an individual with allergies is no excuse for denying access or refusing services to someone with a service animal. Districts may accommodate both individuals by assigning them to different locations within a room or facility, OCR explained, so long as the person using the service animal is not isolated from or treated less favorably than others.



# ADA TITLE II REGULATIONS

This part does not require a public entity to permit an individual to pose a direct threat to the health or safety of others.

28 C.F.R. § 35.139

## Direct threat

- Individualized assessment
- Reasonable judgment based on current medical knowledge
- Nature, duration and severity of risk



- Probability of actual injury.
- Whether reasonable modifications of policies, practices or procedures or the provision of auxiliary aids and services will mitigate risk.

# U.S. Department of Justice – Civil Rights Division – July 6, 2011 commentary

- Allergies and fear of dogs not valid reasons for excluding service animals.
- Accommodate allergies by assigning student with service animal and allergic student “to different locations within the room or different rooms in the facility.”

- Places that sell or prepare food must allow service animal in public areas even if state or local health codes prohibit animals.
- People with disabilities who use service animals cannot be isolated from others.

# **Statement of Interest of the United States of America**

## **C.C. v. Cypress School District (C.D. Cal. June 13, 2011)**

- Persons with disabilities have a right to be accompanied by service animals in all parts of facilities where the public, program/activity participants, or invitees are allowed.

- There is a civil right to use of a service animal.
- The civil right is subject to the exceptions in the regulations.
  - Out of control.
  - Not housebroken.
  - Direct threat to health or safety of others, or
  - Result in a fundamental alteration of the nature of the program.

- No requirement use of service animal be in the best interests of student, or an educational necessity.
- Students and their parents have a right to choose whether a student uses a service dog.

- Public schools must make reasonable modifications to all rules, policies and practices to avoid discrimination.
- “Direct threat” as affirmative defense can only be proved where there are facts, not generalizations or stereotypes, establishing a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level.

# *AP v. Pennsbury School District, 116 LRP 37323 (E.D. Pa. 2016)*

- A Labradoodle dog, named Jeff, was trained as a diabetic alert dog to serve a third-grader with Type 1 diabetes. During the third grade school year, Jeff became generally disruptive. For example, the dog barked, growled and caused disruption in classrooms, assemblies, hallways, and the nurse's office; raced or lunged towards students and school visitors; scared students; and chewed items in the classroom such as a magic eraser, papers, and other classroom tools



# *AP v. Pennsbury School District, 116 LRP 37323 (E.D. Pa. 2016)*

- On March 23, 2016, while running down a crowded hallway where other students were waiting for class to begin, a third-grader attempted to jump over Jeff. The dog bit the running student on the leg, leaving a visible puncture wound on his upper groin area that went through his jeans and into his skin.
- School district banned the service animal from school grounds, citing Title II regulations that allow districts to exclude service animals if they can't be controlled by their handler or pose a direct threat to the health and safety of others. The parents of the student who used the service dog asked for an injunction while their Section 504 and Title II claims were pending. The judge denied their request.



# *Ida (MI) Pub. Schs.*, 66 IDELR 259 (OCR 2015)

- District must allow an individual with a disability to be accompanied by his service animal in all areas of its facilities that are open to the public. Thus, where the 504 Plan of a student with diabetes stated that the service dog would alert teachers whenever the student's blood glucose levels reached dangerously high or low levels — but the district barred the animal from certain parts of the school, including the school playground, most areas of the school library, and certain bathrooms — this was a violation of ADA/504.
- Although the district explained that it restricted the service dog's access to certain school areas based upon concerns of parents regarding the safety of other students, “allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.”



# *United States v. Gates-Chili Cent. Sch. Dist.*, 68 IDELR 70 (W.D. N.Y. 2016)

- ADA case brought by the federal government against a school district must go to trial to determine whether the 8 year-old student has the ability to handle her service dog at school and whether an adult handler is needed require a denial of the district's motion for judgment.
- If the dog is tethered to the child and all she needs is to untether her from the dog, the child can be considered to be in control of the dog. However, if the child requires school district personnel to actually issue commands to the dog, as opposed to occasionally reminding her to do so, then she cannot be considered in control of her service dog.



# *In re: Student with a Disability, 65 IDELR 57 (SEA IL 2014)*

- An Illinois IHO determined that conflict between a second-grader with a seizure disorder and a teacher over the child's service dog might have been avoided had the district followed IDEA procedures for revising IEPs. After informing the district about the student's need for a service dog, the student's parent requested an IEP meeting. The district allowed the student and her dog to attend school but decided to wait until her annual IEP meeting to consider revising the IEP. This denied the child FAPE, the IHO concluded.

# *In re: Student with a Disability, 114 LRP 32429 (OCR 2014)*

- A Georgia district had to revise its policies regarding service animals to resolve a complaint that it engaged in disability discrimination by requiring the student to present information concerning her disability and the dog's certifications during four school assemblies. The parent further claimed that the district subsequently unenrolled the student when she attempted to bring the service dog to class. While Section 504 does not specifically address service animals, OCR explained, Title II of the ADA requires a district to make reasonable modifications in policies, practices, and procedures to allow service animals when necessary, unless the modifications would fundamentally alter the nature of the service, program, or activity



# *Alboniga ex rel. A.M. v. School Bd. of Broward County, Fla., 65 IDELR 7 (S.D. Fla. 2015)*

- A Florida district discriminated against a 6-year-old boy with multiple disabilities not only by failing to provide the assistance he needed to use his service dog at school, but also by requiring the parent to obtain additional vaccinations and liability insurance for the animal. The U.S. District Court, Southern District of Florida ordered the district to provide the assistance the child required.

**BE PREPARED TO  
RESPOND TO A REQUEST  
FOR A SERVICE DOG TO  
ATTEND SCHOOL**



1. Train IEP teams, Section 504 committees and school administrators that a request to bring a service animal to school cannot be denied outright.

2. Is it required for FAPE?



3. IDEA student: IEP Team should meet to consider the issue fully:
- Service animal?
  - Required as a related service?
  - Needed to provide FAPE?

4. Section 504 student: The Section 504 Committee should meet to consider the issue fully. Does the service animal need to be a part of the Section 504 plan (designed to meet the needs of the disabled student as adequately as the needs of other students are met)?

5. IDEA or Section 504
  - May only ask if animal is required because of the disability
  - And what work or task the animal has been trained to perform
  - All other analysis must flow from this information

6. Even if the service animal is not required to provide FAPE, ADA Title II regulations give the student the right to bring it to school if requirements are met.
- Is the dog a service dog?
  - Does it meet the various requirements in the regulations?

- Would bringing it to school fundamentally alter the school's program? (Not likely)
- Does service animal's presence pose a direct threat to the health or safety of others?
- If so, are there reasonable accommodations to address the threat?

7. If the dog will be coming to school, advise students, parents and staff. Train everyone that the dog is there to work and not to bother it. Inform what the dog will be doing within the bounds of FERPA.

8. Plan for the service animal's presence at school.
  - Rest areas
  - Relief breaks
  - Water and feeding
  - Emergency evacuation plans
  - Fire/disaster drills
  - Presence at lunch, gym, recess

9. Plan for service animals on school transportation.
  - Develop written guidelines
  - Only service animals would be allowed
  - Notify other students and parents
  - Reinforce the dog is working and is not a pet



- Practice how it will work
- Consider the dog's safety – safety straps – harness?
- Prepare for emergency evacuations



10. Address allergies in others.  
Is there a direct threat to health or safety of others due to dog's presence. This is a medically-based decision, not an educational one.



11. Apply service animal rules to other settings – sporting events, school events such as plays, talent shows, etc. ADA Title II regulations will allow presence of service animals. ADA Title II regulations apply to students, parents, staff, visitors, etc.

12. Read the guidance from the U.S. Department of Justice and keep up with new developments and interpretations.



- DOJ website: [www.ada.gov](http://www.ada.gov)
- DOJ ADA information line
  - 800-514-0301 (voice)
  - 800-514-0383 (TTY)

12. Read DOJ “Frequently Asked Questions about Service Animals and the ADA,” which can be found at 115 LRP 30805 (DOJ 07/01/15)



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