

Legal Update: Service Animals



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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, whether wild or domestic, trained or untrained, 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 individual's disability.
- 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, ...

Definition (continued)



- ... 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.
- 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.

28 C.F.R. § 35.104.

In 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.

28 C.F.R. § 35.136(a).

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.

28 C.F.R. § 35.136(b).

If an Animal is Properly Excluded



- If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

28 C.F.R. § 35.136(c).

Animal Under Handler's Control



- A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

28 C.F.R. § 35.136(d).

Care or Supervision



- A public entity is not responsible for the care or supervision of a service animal.

28 C.F.R. § 35.136(e).

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).

28 C.F.R. § 35.136(f).

Access to Areas of a Public Entity



- Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

28 C.F.R. § 35.136(g).

Surcharges



- A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

28 C.F.R. § 35.136(h).

Miniature Horses: Reasonable Modifications



- 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 miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

28 C.F.R. § 35.136(i)(1).

Miniature Horses: Assessment Factors



- In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider—
 - (i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
 - (ii) Whether the handler has sufficient control of the miniature horse;
 - (iii) Whether the miniature horse is housebroken; and
 - (iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

28 C.F.R. § 35.136(i)(2).

Miniature Horses: Other Requirements



- Paragraphs 35.136(c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

28 C.F.R. § 35.136(3).

Cases for review



C.C. v. Cypress School District, 56 IDELR 295 (C.D. Cal. 2011)

- The school attempted to prevent the student from bringing his service dog to school.
- 6-year-old student with autism.
- The dog was specially trained to prevent the child from shrieking, throwing tantrums, and eloping.

Cases for review



C.C. v. Cypress School District, 56 IDELR 295 (C.D. Cal. 2011)

- The school tried to raise concerns about additional expenses needed to support dog on campus, including staff training and addressing other students' reactions to the dog at school.
- The school also argued that permitting the dog on campus would fundamentally alter the nature of the district's program, but the school failed to actually demonstrate such an impact.
- The Court issued an injunction against school; ordered that the dog is permitted to attend.

Cases for review



West Gilbert (AZ) Charter Elementary School, Inc., 115 LRP 52095 (OCR 06/30/15)

- Complaint brought by the parent of a child with severe allergies to pet dander.
- The student experienced allergic reactions when passing the dog in the hallway.
- The parent's complaint sought to prevent the student with the service animal from bringing the dog to school.

Cases for review



West Gilbert (AZ) Charter Elementary School, Inc., 115 LRP 52095 (OCR 06/30/15)

- The school argued that it made reasonable attempts to accommodate both students.
- The school modified the students' schedules, installed air filters, and provided additional cleaning.
- OCR found that this was not enough and required the school to take more steps to accommodate both students.

Cases for review



West Gilbert (AZ) Charter Elementary School, Inc., 115 LRP 52095 (OCR 06/30/15)

- OCR pointed out that the school never formally reevaluated the student's needs after the introduction of the service dog.
- Also, the school did not attempt to convene an IEP team meeting to discuss incorporating additional services into the student's IEP.
- OCR stated that the "measures the School took were based not on an assessment of the Student's individual condition and educational needs, but rather on the so-called 'common sense' of School personnel.

Cases for review



Doe by R.C. and E.D. v. United States Sec'y of Transportation, 118 LRP 49416 (12/4/2018)

- Middle schooler with asthma and severe allergies to animal dander encountered a service animal at her school on at least four occasions.
- Among the instances of exposure claimed, included an encounter with a visitor's service dog during a graduation ceremony, and another during an orchestra concert.
- The court pointed out that the ADA Amendments Act required the district to permit service animals on school grounds.
- Because of that, the parents could not show the district discriminated against their daughter when it allowed another child's parent to bring her service animal to school events.

Cases for review



Doe by R.C. and E.D. v. United States Sec'y of Transportation, 118 LRP 49416 (12/4/2018)

- However, the court noted that the district had an obligation to accommodate the student's disabilities as well.
- The student had a provision in her Section 504 plan that called for her to be at least 30 feet from service animals at all times.
- The facts established that on multiple occasions the dog was allowed to be within 30 feet of the student with the severe allergy to animal dander.
- The court agreed with the student's allegations as sufficient to support a claim that the district failed to accommodate the student's disabilities.

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The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.



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