

## **Service Animals under the Americans with Disabilities Act (ADA)**

On September 15, 2010, the Department of Justice published revised final regulations implementing the ADA for Title II (State and local government services) and Title III (public accommodations and commercial facilities). The revised regulations contain a number of provisions which relate to service animals in schools.

Here are some frequently asked questions developed from a recent Department of Justice (DOJ) webinar on the subject:

- Q. The parents of a child with autism ask the school to allow the child to have access to his pet rabbit in the afternoons. Afternoons tend to be an especially stressful time of day for the child and stroking the rabbit assists the student to de-escalate. Does the school have to allow the student to have his pet rabbit at school each afternoon?
- A. No. The term “service animal” is defined to include dogs only. In years past the Department of Justice saw cases where a variety of animals were claimed to be service animals for disabled individuals, including rabbits, boa constrictors, llamas, etc. The Department of Justice's final rule defines “service animal as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability.” 28 C.F.R. § 35 App. A.

*Note: In addition to the provisions about service dogs, the Department’s revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.*

- Q. A parent tells the school that the family’s dog is in the process of being trained as a service animal, and wants her child to begin bringing the dog to school this week. Training will not be completed for about 6 to 8 weeks. Does the school have to allow the student to bring the dog to school at this time?
- A. No. “Service animal” does not include those dogs not yet trained or still in training. The animal must be already trained for the ADA to apply.
- Q. Because parent believes his disabled child is bullied at school, parent requests that the child be allowed to bring his dog and argues that this is allowed because a service animal may be used under the ADA to provide “minimal protection.” Does the school have to allow the student to bring his dog?
- A. No. The ADA regulations were revised to eliminate the “minimal protection” language from the service animal definition for two reasons: (1) The phrase can be interpreted to

allow any dog that is trained to be aggressive to qualify as a service animal simply by pairing the animal with a person with a disability; and (2) the phrase can be interpreted to allow any untrained pet dog to qualify as a service animal, since many consider the mere presence of a dog to be a crime deterrent, and thus sufficient to meet the minimal protection standard. The new regulations modify the “minimal protection” language to read “non-violent protection,” thereby excluding dogs with traditional “protection training” as service animals, and clarifying that the mere crime or aggression -deterrent effect of a dog's presence, by itself, does not qualify as work or tasks for purposes of the service animal definition. 28 C.F.R. § 35 App. A.

- Q. The dog purposed to be used by a student is the family dog, and was not trained as a service animal by a professional trainer or organization. Can the school deny the dog access on that basis?
- A. No. While the regulations require that the dog be “individually trained” to do work or perform tasks for the disabled child, that training need not be conducted by a professional trainer.
- Q. How many tasks must the dog be individually trained to perform for the child, is one or two enough?
- A. Yes. There is no set number or quantity of tasks required. The dog could be trained to perform only one or two tasks for the child, what matters is whether the dog was individually trained to do that work or perform that task for the child.
- Q. Parent of child with autism wants the student to have the dog at school to provide emotional support. The parent insists that without this emotional support it will be impossible for the child to remain attentive and calm enough to make progress and receive FAPE. The school believes it can provide FAPE without the dog. Does the child get to bring the dog?
- A. No, at least not under the ADA. The Department of Justice has clarified that “to do work or perform a task” a dog must be individually trained to do more than simply provide emotional support, provide comfort or provide companionship. Providing emotional support, comfort, and companionship do not constitute “work or tasks” for purposes of the ADA.

*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, 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 App. A*

Q. Are the following examples “work” or “tasks” under the ADA?

- A child with autism bolts when upset. The dog is trained to immediately resist the bolting by putting pressure on the leash. (Yes)
- A child with autism sometime flails about on the floor, the dog is trained to lay on top of the child to apply pressure and stop the flailing. (Yes)

Q. Given the examples in #7, school staff assert that they have techniques to use when the child bolts or flails, and staff insists that their techniques are better than what the dog can do. Does the child get to bring the dog?

A. Yes. According to the DOJ, even if a person/aide can perform the task better than the animal, the disabled child has a right to the dog. The question is whether the dog is individually trained to do work or perform tasks for the child with a disability, if so, the child has a right to the animal under the ADA.

Q. Parent says that his child needs the dog at school because it has an innate ability to calm his child. Does the student get the dog?

A. No. The key here is again whether the dog has been individually trained to do work or perform tasks for the child. Every dog can calm someone, the animal has to do more than what’s innate, it has to be trained individually for a specific task. For example, if a dog is trained to react to a child’s impending or increasing aggressiveness by immediately moving closer and brushing up against the child or putting pressure on the child, that would qualify.

Q. What right does the school have if a dog is not proficient at the task?

A. According to DOJ staff, the school always has the right to challenge whether the dog is, in fact, a trained service animal. However, according to DOJ staff, schools should take care when doing so. When addressing a complaint brought by a parent in this situation, the DOJ will make a careful analysis of how the school arrived at its determination that the dog was not a trained service animal. Schools will need to be prepared to answer: 1)

who made the determination, and 2) what specific facts that individual relied upon when making that determination.

Q. Can a school ask if a dog has a license?

A. No. According to the DOJ, such an inquiry would be impermissible under the ADA because it does not go to any of the reasons the school could exclude the dog under the ADA, i.e., it doesn't go to: 1) whether the dog is housebroken, and 2) whether the dog is under the control of the handler. See 28 C.F.R. . § 35.136 which allows a public entity to 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.

Q. Can a school ask a family to have insurance or ask if they have insurance in case the dog bites someone?

A. According to DOJ staff, no. Again, the DOJ considers these to be impermissible requests because they do not go to the two conditions upon which a public entity may exclude a service animal.

Q. Can a school ask whether the dog is housebroken?

A. According to the DOJ, no. The DOJ will strictly construe the rule and considers only two questions permissible:

When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.  
*Guidance on Revised ADA Requirements: Service Animals, U.S. Dept. of Justice, July 12, 2011*

Q. Can a school define "housebroken" to include: clean, well-groomed, doesn't steal food from other kids?

A. No, according to DOJ staff, schools cannot ask this question or define "housebroken." DOJ staff note that the issue of food handling would go to whether the dog is under control of the handler.

- Q. Without asking questions of the family, could a school have a policy on what it means for an animal to be under the handler's control?
- A. According to DOJ staff, schools are only allowed to ask the two questions and are not allowed to impose other conditions through policies or requirements that families sign some sort of notice or agreement.
- Q. Can a school require a handler to undergo a criminal background check?
- A. Yes, according to DOJ staff if the school requires all school volunteers to have a criminal background check, then the school can require handlers to undergo a background check. This would be a non-discriminatory action because it is required of all school volunteers, not just handlers' for disabled children's animals.
- Q. Would the school ever be required to pay for a handler?
- A. Under the ADA, no. Under 504 and the IDEA, only if it is required for FAPE/on the IEP.
- Q. Can the school tell a family they must use "our handler," e.g., a school staff person, rather than the parent or some other handler preferred by the family?
- A. According to DOJ staff, no. It is the DOJ's position that this would be impermissible discrimination. If the dog meets the definition of "service animal," is housebroken and under the control of a handler, then the disabled person has the right to choose who will do the handling.
- Q. Can the school require the parent to handle the dog if the child cannot do it his/herself?
- A. According to DOJ staff, yes. If the child is not able to handle the dog, the family must provide the handler. The school is not required to provide the handler.
- Q. Does school staff have to take the dog to the bathroom?
- A. No, but school staff may have to accompany the child when the child takes the dog to the bathroom. This would constitute a reasonable accommodation for the child.
- Q. Would a service animal ever be a "fundamental alteration" of the school's program?
- A. According to DOJ staff, they would be hard-pressed to think of a set of circumstances where this would be the case.

- Q. What should a school do in the case of competing interests where one family wants their child to have a service animal and another family objects because their child is severely allergic to pet dander?
- A. It depends. This type of situation tends to be extremely fact-specific and it is hard to make a blanket statement. According to DOJ staff, the Department will look at the school's analysis of the situation and take into consideration the complicating factors. The Department will look to see whether school officials made a good faith effort to resolve the dilemma through a reasoned analysis considering all the relevant factors.

*Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility. Guidance on Revised ADA Requirements: Service Animals, U.S. Dept. of Justice, July 12, 2011*

*These materials were designed to accompany an in-service educational program. While we have made our best effort to ensure accurate information, this document is not legal advice. Please contact your attorney regarding specific questions as each situation presents unique facts that must be considered before advice may be rendered.*