



## Service Animals In School

Insights

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### (Education Update, January 2014)

Joey is a 5<sup>th</sup> grade student who is hearing impaired. Joey's parents request that he be allowed to attend school with his service dog, Snickers. You learn that Joey's teacher is severely allergic to animal dander. You are also aware that several students in Joey's class are afraid of dogs. What do you do?

While you may have concerns about permitting dogs in your school, both federal and state laws limit the circumstances under which you may exclude such service animals. In fact, Title III of the Americans with Disabilities Act requires covered entities, which includes private and public schools, to "modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability."

In addition, schools that receive federal financial assistance – including religious schools that may be exempt from Title III – must comply with the requirements of section 504 of the Rehabilitation Act of 1973. While it does not appear that Florida's service animal statute applies to schools, several states, including Alabama, Illinois, and New Jersey, have laws giving students with disabilities the right to bring their service animal to school.

### What Is A Service Animal?

The Justice Department (DOJ) regulations to the ADA define "service animal" as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability."

When most people think of service animals, they think of guide dogs.

But as the DOJ regulations make clear, animals are now trained to provide far more services such as alerting individuals who are deaf to the presence of people or sounds, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine, 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.

Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA. However, state and local laws may define service animal more broadly to include emotional support animals.

## **What Information Or Documentation May You Require?**

In determining whether to approve or deny a student's request to bring a service dog to school, administrators may ask: 1) whether the dog is required because of a disability, and 2) what work or task the dog has been trained to perform. According to DOJ guidance, you may not ask about the nature or extent of the student'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 identified. Moreover, the school may not charge students more because they bring a service animal to school.

## **When Can You Refuse A Request?**

Of course, the ADA provides exceptions to the accommodation requirement, such as when the animal is a direct threat to others, or when the presence of the animal would fundamentally alter the program or service provided. But service animals are unlikely to create safety or threat problems given their specialized training and desensitization to distractions. The more likely problem is keeping other students from treating the animal like a pet when the animal is "working."

Schools may ask that the service animal be removed from the premises if the dog is out of control or not housebroken. When there is a legitimate reason to ask that a service animal be removed, the school must offer the student with the disability the opportunity to attend classes without the animal's presence.

The DOJ takes the position that allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. Thus, 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, as, for example, in our scenario above, the DOJ recommends that both individuals be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

A school's failure to comply with the law regarding service animals could result in either an investigation by DOJ or a private lawsuit. Service-animal issues are growing and somewhat complicated. If you'd like to discuss the situation, give us a call.

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