

# WEB EXCLUSIVE: EMOTIONAL RESCUE? EMOTIONAL SUPPORT ANIMALS IN SCHOOLS

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Just when private schools were becoming relatively knowledgeable about their obligation to allow a disabled student's service animal on their premises, they started getting requests from employees to have their emotional support animal accompany them to work. Schools may have thought (or desperately hoped) they were not required to permit an emotional support animal on campus to accommodate an employee since doing so was not required for students.

Indeed, with news stories of an emotional support dog biting someone on a flight, an emotional support alligator visiting a residential home for the elderly, and a woman attempting to board a plane with her emotional support peacock, schools may have been convinced that requests for emotional support animals could not possibly be reasonable. However, such a thought would be incorrect. You need to understand your obligations when it comes to emotional support animals for both your student population and your workforce.

## THE AMERICANS WITH DISABILITIES ACT (ADA)

Any discussion of support animals needs to begin with an examination of the ADA. Titles I and III of the ADA are overseen by two different government entities: the Equal Employment Opportunity Commission (EEOC) enforces Title I, and the Department of Justice (DOJ) enforces Title III. The regulations governing Title III define a service animal to be a dog (or, on limited occasions, a miniature horse) that is specifically trained to do something on behalf of the

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disabled individual to mitigate the effects of the disability. In contrast, the EEOC has never defined “service animal” or even mentioned an emotional support animal as a possible reasonable accommodation in any of its ADA guidances.

Over the years, however, EEOC representatives have occasionally commented that the EEOC is not bound by the DOJ’s definition of service animal, and that an emotional support animal might be considered a reasonable accommodation under the ADA. And the agency has acted upon this opinion. For example, the EEOC sued a trucking company in 2017 for allegedly violating the ADA after the company revoked its job offer to a disabled individual who asked the company to allow his emotional support dog, which a physician had prescribed for him, to mitigate the effects of his PTSD to accompany him in his truck.

The EEOC’s position, though unsurprising, caught many businesses unaware. Consequently, in order to correctly understand your obligations under the ADA, schools need to distinguish between requests for modification under Title III of the ADA—which governs students’ and possibly others’ requests, e.g., parents—and Title I of the ADA, which concerns employee requests for accommodation.

## **STUDENT REQUESTS**

Title III of the ADA requires your school to modify policies and procedures to accommodate disabled students. This obligation may require you to permit a student to have their service animal attend school and school events with them. The distinguishing feature of a service animal is that it is trained to do something to mitigate the individual’s disability, e.g., guiding the blind, alerting an individual to an impending seizure or hypoglycemic episode, disrupting repetitive behavior such as that an individual with obsessive-compulsive disorder or anxiety might display, picking up items for those in wheelchairs, etc. Consequently, your school does not have to permit a student or parent to bring a dog on campus that is not trained to do something with respect to their disability.

First, if a student asks to permit their service animal accompany them to school, and it’s a service squirrel, cat, or alligator, you can just say no. If, however, the animal is a dog, you may inquire whether the requesting individual is disabled, and what work or task the dog is trained to do for

the individual. You may not require a certificate of training as a condition to granting the request. Indeed, a disabled person may train their own service animal.

If the individual is disabled, but simply reports that the dog's presence makes them less anxious, the dog does not meet the definition of service animal. Assuming the dog is trained to alleviate symptoms of a disability, or to assist the individual or alert the disabled individual, allowing the dog on premises may be a reasonable modification of your "no-pet" policy.

Even then, however, the dog must be under the student's control, and it cannot be a threat of harm that cannot be reduced or eliminated through accommodation. Others' fear of dogs or others' allergies to dogs are not a viable reason to deny the request. Consequently, your school may not deny the request based on concerns about the dog's breed.

## **EMPLOYEE REQUESTS**

Title I of the ADA requires employers to provide reasonable accommodations to qualified disabled employees. According to the EEOC, a reasonable accommodation might mean allowing a disabled employee to bring their emotional support animal to work. The conceptual difficulty is that the EEOC has never defined the term and there is no case law under Title I defining the term.

The Department of Housing and Urban Development, which is responsible for enforcing the Fair Housing Act, however, has defined assistance animal as "a dog or any animal that works, provides assistance, or performs tasks for the benefit of the person with a disability or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability." Whether the EEOC would agree with this definition is unknown. Certainly, the EEOC most likely would agree that permitting a service animal at work would be recommended. Another non-legal definition of emotional support animal is "a companion animal that a medical professional says provides some benefit to a person disabled by a mental health condition or emotional disorder."

As seen from reading these two definitions, one definition would restrict the use of emotional support animals to individuals with mental disabilities or psychological disorders, while the other would not. Arguably, both

definitions would require that a physician attest to the emotional support animal's benefit to the disabled individual.

When it comes to an employee who requests a service animal as an accommodation, you should generally follow the same procedures you use for a student's request. As to any concerns that you might have to accommodate an emotional support cow, goat or any other non-companion animal such as a squirrel—and there is a website to advise individuals how to obtain a service squirrel—there's no evidence to date that the EEOC would agree that such was a reasonable accommodation.

In such a case, the greater concern is that the animal does not have to be trained. This raises fears of an unruly animal with bite-potential on campus or the school serving as an inexpensive doggy daycare. After receiving a request that the employee's emotional support animal be permitted on campus, in addition to confirming that the employee is disabled, you may also inquire whether the emotional support animal alleviates the effects of that disability, and whether the animal is necessary. If the animal's presence is not necessary, you may deny the accommodation.

You should also inquire whether there is an alternate accommodation that meets the employee's needs. An employer is not required to provide the preferred accommodation for a disabled employee—only one that is reasonable. Thus, if the employee requested an emotional support animal, and there is some alternative accommodation that would meet the employee's needs, you may deny the request to have an emotional support at work and provide the alternative accommodation.

Finally, as with service animals, the animal cannot present a threat, the employee must maintain control of the animal, and you can deny the accommodation if the specific animal in question poses a threat to the health and safety of others that cannot be eliminated or reduced by another reasonable accommodation.

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