Division of Special Education/Early Intervention Services

Service Animals

The Americans with Disabilities Act (ADA) has established new regulations regarding comprehensive guidelines for public entities to follow in dealing with the special circumstances of students requiring a service animal. The ADA is a civil rights law and pertains to “equal access” for individuals with disabilities. The nature and use of service animals are not part of the Individuals with Disabilities Education Act (IDEA) and are therefore not specific to special education requirements. The new ADA regulations became effective as of March 15, 2011 and affect not only students seeking to bring a service animal to school, but any disabled person desiring to bring a service animal to a public school or school function.

These ADA regulations cover the definition of service animal, and the qualifications required for a disabled student, staff member or visitor to use service animals at schools. While the regulations exempt the school district from any damage, liability or responsibility for animal care, the new rules limit the school district’s authority and discretion in setting policies for service animals. The new federal rules specify that only a dog or miniature horse is allowed as a service animal and that the animal must be “individually trained to do work or perform tasks for the benefit of an individual with a disability.” However the regulations do not stipulate any specific type of training and in fact prohibit the school district from requiring documentation that the dog or miniature horse has been certified or licensed as a service animal.

The new regulations charge the owner of the service animal with all liability for any damage or injury as a result of the animal’s presence, as well as total responsibility for the animal’s behavior and care. The school district at its discretion may allow for some staff involvement with the care of the animal and determine district policy in that regard. The only circumstances under which the district can remove a service animal that are expressly mentioned in the regulations are when the owner cannot control the animal or when the animal is not housebroken. Allergies or fears experienced by other students or school staff are not expressly defined as grounds for disallowing the service animal. However, under general ADA standards, the animal might be removed if the school district determines that the animal is a direct threat or its presence would fundamentally alter the nature of the school’s activity.
The purpose of this document is to provide guidance to address the issues and procedures for meeting the needs of children and students with service animals within the education setting while ensuring compliance with the new regulations.

[28 CFR §35.104; 28 CFR §35.136]

1. **Is there an existing and recognized definition of a “service animal”?**

Yes. Title II of the ADA was revised in September 2010. These revisions include a change in the definition of a service animal. Effective March 15, 2011 the definition of a service animal is:

“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, 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.”

The revised ADA regulations also require jurisdictions to develop a policy to permit the use of miniature horses trained to perform a task or to do work to assist an individual with a disability.

[28 CFR §35.104; 28 CFR §35.136]

2. **Is there any regulatory guidance specific to the inclusion of miniature horses as service animals?**

Yes. The ADA requires that “reasonable modifications” be made to 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.

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.

The regulation also holds that requirements particular to a service dog also applies to the miniature horse

[28 CFR §35.136(i)]

3. Does this regulation now make service animals a related or supplementary service and as such to be included within the student’s Individualized Education Program (IEP)?

Not necessarily. Title II of the ADA is a civil rights law and pertains to “equal access” for individuals with disabilities. The nature and use of service animals are not part of the IDEA and are therefore not specific to special education requirements. Any special education issues pertaining to service animals would be an appropriate topic for the student’s IEP team to address.

[28 CFR §35.104; 28 CFR §35.136]

4. How can a local school system (LSS) ensure that an animal is really a service animal and not a pet?

If LSS personnel are not certain that an animal is a service animal, there are only two questions that may be asked: Is the service animal required because of a disability? What has the animal been trained to do? These inquiries should not be made regarding 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.

The LSS may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. The LSS also cannot ask about the nature or extent of a person’s disability.

[28 CFR §35.136(f)]

5. Must a service animal wear a special harness or leash?

Not necessarily. The regulation holds that: “A service animal must 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 CFR §35.136(d)]
6. What must be done when an individual with a service animal comes to a school or school function?

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

[28 CFR §35.136(g)]

7. Are school staff/personnel responsible for the animal while the person with a disability is in the school or facility?

No. The care or supervision of a service animal is solely the responsibility of his or her owner. The LSS or school is not responsible for the care or supervision of a service animal.

[28 CFR §35.136(e)]

8. Are there exceptions that would cause a service animal to be excluded from a school or school function?

Yes. A public entity may ask an individual with a disability to remove a service animal from the premises if: The animal is out of control and the animal’s handler does not take effective action to control it; or The animal is not housebroken. The service animal may also be excluded from a school building, school function, or school sponsored activity if permitting the service animal would fundamentally alter the nature of the service, program or activity. If a public entity properly excludes a service animal, 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 CFR §§35.130(b)(7); 35.136(b) and (c)]

9. May a service animal be excluded from facilities in which there is a standing “no pets” policy in place?

No. Except in a very limited number of situations, individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity’s facilities (schools) where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

[28 CFR §35.136(g)]

10. May a service animal be excluded from facilities due to the fears or allergies of other students or school staff?

Allergies and fear of animals are generally not valid reasons for denying access or refusing service to people with service animals.

[http://www.ada.gov/svcanimb.htm]
11. May the LSS refuse to allow service animals on school buses or require the individual with a service animal sit in a designated area?

No. Since access to public transportation is a civil right for individuals with disabilities under the ADA, an individual with a service animal cannot be refused transportation service nor can the individual be segregated from other passengers. The service animal must be permitted to accompany its owner on school buses or other school use vehicles. However, service animals may not block aisles or exits or otherwise interfere with other passengers reaching them.

[42 U.S.C. §12132; 28 CFR §35.136(g)]

12. May the LSS impose a charge related to the presence of a service animal within the school setting?

No. 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 CFR §35.136(h)]

13. Is it permissible or appropriate to pet or feed another person’s service animal?

No. Service animals work and perform tasks and are not pets. The recommended “best practices” when interacting with service animals include:

- Do not touch or feed a service animal unless invited to do so;
- Do not deliberately distract or startle a service animal, and;
- Do not separate or attempt to separate a service animal from the individual using the animal’s service.


14. Are service animals in training allowed to accompany their trainer into a school or school function?

Yes, under Maryland law, a service animal trainer may accompany a service animal in training into any facility where a person with a disability would be permitted to bring a service animal. Service animals in training may only be excluded if there would be a clear danger of disturbance or physical harm to those in the facility.

[Md. Code Ann., Human Services, §7-705(c)]