

Policy & Procedure Guidance on Service Animals

Disability Services Program (DSP) – Merritt College

Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (state and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements.

Service Animal: Definition.

A service animal is a dog that does work or performs tasks for the benefit of an individual with a disability (including physical, sensory, psychiatric, intellectual/cognitive or other mental disabilities).

The service dog has been individually trained to recognize individuals' need and respond accordingly.

If it is not a dog then it is not a service animal, and, unless it qualifies under the miniature horse regulations, the ADA does not obligate you to permit it. (More on miniature horses later.)

Examples of tasks (provided by Department of Justice):

- Assist during seizure (alerting a seizure is imminent, nudging person to safer environment)
- Retrieving medicine or other items (from bags or backpacks)
- Helping individual with a psychiatric condition, such as dissociative identity disorder, to remain grounded
- Preventing/interrupting impulsive or destructive behavior
- Assisting with balance, stability
- Providing non-violent protection or rescue work (cannot qualify if behaves aggressively)

This list of tasks was added to the more traditional tasks that hearing dog and Seeing Eye dogs perform.

If the only function of the dog is to provide emotional support/comfort then it is not considered a service animal. (See later discussion on 504, HUD and FEHA).

Only two questions can be asked.

1. Is this service animal required because of a disability?
2. What work or tasks is the animal trained to perform?

(The jury is still out on whether we can ask if the dog is current in its vaccinations.)

You cannot ask about disability, but these two questions, which are not considered intrusive, can, hopefully, elicit why the service dog is needed. This can get sticky if you as a DSPS professional don't feel the answers are credible or doubt the responses are true. It becomes a risk management question. Do you take the risk and ask more intrusive questions chancing a complaint or give the individual the benefit of the doubt? Choose a dog lover as your key point person on this issue. Asking the individual/handler for permission to kneel down and pet the dog gives the staff member an opportunity to peruse tags. Common sense rules!!

Other issues.

An entity can exclude a service animal if:

- it is not controlled or
- it is not housebroken
- it is a threat to the health and safety of others
- it does not conform to the college's standards of conduct

The care and supervision of the service animal is the responsibility of the individual, including waste management! The college is not responsible for care or supervision of a service animal.

A service animal does not have to be leashed, tethered or harnessed if the disabling condition or performance of tasks requires the animal to be off-leash. However, the animal must then be controlled by voice or gestures. You may only remove a dog if its presence causes a fundamental alteration to the course or it poses a direct threat. However, if you exclude the animal for one of the above reasons, the individual cannot be excluded from the programs and services offered by the college.

You also cannot ban a breed of dog, such as pit bulls, you can only make decisions based on the observed actions of the dog not presumed behavior.

No "service animal" license or documentation required. However, local city/county ordinances may require all dogs to be licensed and require proof of vaccinations.

Service Animals: Other laws and requirements.

Other laws or codes may call for admission of animals other than dogs that provide emotional support or comfort.

For example:

Section 504 regulations go beyond the ADA and we are awaiting some clarification on whether emotional support animals allowed under section 504 will be updated to ADA standards. FEHA allows comfort animals in residential dwellings, such as dormitories.

For those few colleges that have dormitories, the DOJ regulations apply, but they recognize that the Fair Employment and Housing Authority (FEHA) and the Department of Housing and Urban Development (HUD) regulations also may apply. If those regulations do apply to you, you are able to ask more intrusive questions about the animal.

Many states have laws that define service animals more broadly. The Department of Justice regulations do not prevent states from imposing greater regulations. Before developing your policy and procedures check state and local regulations.

Miniature Horses.

First, do not panic!! There are very few miniature horses in the U.S., so you may not see one on your campus in the near future. That said, you do need to have procedures in place in case one trots onto your campus.

You might also be asking why miniature horses? Well, aside from a strong lobby, miniature horses may be considered a reasonable alternative to a service dog.

Some individuals are allergic to dogs; some have religious objections to dogs; horses live longer (the average life of a service dog is around 7-10 years whereas a horse can live around 20 years, and because the horses are larger...about the size of a large dog (Great Dane, St Bernard?) they may provide more stability for someone with a mobility impairment or who might be unsteady on their feet. Mini horses are also very intelligent and are easier to train than dogs.

BUT they don't fit neatly under the desk. Therefore, careful consideration needs to be given to your procedures for addressing this issue.

The same provisions apply as to service dogs. You must make reasonable modifications to permit a miniature horse that has been individually trained to do work or perform tasks for individuals with disabilities. You are not responsible for the care and supervision of the horse.

You need to assess the following:

- Type of miniature horse, size (around 24-34 inches measured to the shoulders) and weight of the horse, around 70-100 pounds, (think small classroom or lab, remember the horse is not flexible and cannot not curl up at your feet!)
- Individuals' control of the horse
- Whether the horse is house broken (you'll find that out pretty quickly!)
- Legitimate safety requirements of specific facility
- If you have legitimate safety concerns you must admit individual without animal

Note: Horses do not live inside and would require a grazing area.

Policies and Procedures

Policy

Published policy: ADA

- Dogs only
- Work or tasks for individual with disabilities
- Includes people with various types of disabilities
- Not emotional support animals
- Control and care by handler
- Locations of rest areas (not required under ADA)

As with any policy it is recommended that the policy be brief and broad, such as:

In order to prevent discrimination on the basis of disability the District will provide equal access and reasonable accommodations to individuals with disabilities using a service animal in compliance with federal law.

If you have dormitories, you should consider a separate policy that addresses housing regulations. Some animals that are allowed in residential settings may not be appropriate in classes and other settings

Procedures

Service Dogs – key elements of procedures

- Permissible inquiries
- Types of task
- No documentation required

- Allow handler even if animal is excluded
- Particular considerations, e.g., health care

Be as detailed as possible in your procedures and if possible appoint a “Dog person” or point person who would be the arbiter of what is appropriate considering you are only able to ask two questions. Ensure all staff and the ADA Coordinator are briefed on permissible enquiries and all procedures.

The procedures should be clear and concise and:

- Determine if the work or tasks performed by the service dog are directly related to the individual’s/handler’s disability
- Determine service dog is not a comfort animal*
- Determine if dog is under the control of the individual
- Determine if dog is housebroken
- Allow individual/handler to attend classes even if service dog is excluded.
- Inform individual/handler of their responsibilities regarding care and supervision
- Inform individual/handler of any local/county licensing laws
- Provide process for complaints (others in class with allergies to dogs, etc.)
- Identify ‘pooping palaces’. You might laugh at this, but experienced coordinators will tell you this can be one of the biggest and most time-consuming issues on campus.

**If a student states that “. . .he needs the dog for emotional support,” that is not sufficient. Emotional support is not a recognized task that a dog is individually trained to perform and excludes the dog from being classified as a service dog. Under the ADA, the dog is nothing more than a pet and can be treated as such including or excluding it in the same manner as any other pet (unless the school desires to determine it is an accommodation under Section 504).*

Miniature Horses: Assessment Factors

The District shall consider the following factors:

- The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- Whether the handler has sufficient control of the miniature horse;
- Whether the miniature horse is housebroken; and
- Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

The procedures should be clear and concise and:

- Determine if the work or tasks performed by the miniature horse are directly related to the individual's/handler's disability
- Determine miniature horse is not a comfort animal
- Determine if miniature horse is under the control of the individual
- Determine if horse is housebroken
- Allow individual/handler to attend classes even if miniature horse is excluded.
- Inform individual/handler of their responsibilities regarding care and supervision
- Identify 'grazing area'
- There are no licensing laws pertaining to miniature horses

Important Note: *This documentation is a result of reviewing the new ADA regulations, ADA fact sheet, various publications and attending several webinars. It is not meant to be a legal document, nor should this be construed as Chancellor's office guidance. It is our best effort based on all information currently available. We do expect more guidance from OCR and some clarification on the variance with Section 504 and comfort animals in the near future.*