



4 Primary Ways Animals come to School

- Classroom Pets
- Service animals for staff
– Title I ADA (Employment)
- Service animals for students:
– Title II ADA
– Section 504
- Service animals for patrons/parents
– Title III (Public Accommodation)

What Kind of Service must a service animal be trained to perform?

- Assisting the vision impaired
- Assisting the hearing impaired.
- Pulling wheelchair.
- Assisting person during seizure.
- Alerting person to allergens.
- Preventing or disrupting impulsive or destructive behaviors.
- Non-violent protection.

What functions do not qualify?

- Emotional support
- Comfort
- Companionship
- Crime deterrence
- Protection



Liability for classroom pets



Issues with Classroom Pets

American Humane Association 2015 Study

- "What challenges have you experienced having a pet in the classroom?"
 - Managing children's allergy issues=5.5%
 - Managing child and animal safety issues=8.2%



Liability for Injuries inflicted upon students by animals at schools

- School District has liability for allowing animals in schools that injure students.
- Employees injured by animals at school may have compensable workers' compensation claim.



Federal Law / State Law Protection for Disabled persons needing service animal.

- Federal Law
 - Title II of the Americans with Disabilities Act (ADAA)
 - Pre-2011 ADA Regulations: All animals
 - 2011 ADA Regulations: Dogs and miniature horses.
 - Section 504 of the Rehabilitation Act of 1973
 - 28 C.F.R. 36.104 "Service Animal"
 - IDEA
- State Law
 - ORS 659A.143

State Law: ORS 659A.143

- "Assistance animal"
- Definition: "a dog or other animal designated by administrative rule that has been individually trained to do work or perform tasks for the benefit of an individual." ORS 659A. 143 (1)(a)
- Includes animal trainers and trainees.

Note: Does not specify "type" of animal.



Interfering with an assistance animal

- Crime to knowingly or intentionally interfere with an assistance animal:
 - While assistance animal is being used to provide assistance
 - Class A misdemeanor
 - ORS 167.352



Redrock the Boa

- He's a "Service Snake".
- Redrock the Boa, hangs on Man's neck to alert to pending seizures.
- Gives owner a hug when he has a pending seizure.
- "Need to be stronger than the snake." Parent comes to school with his assistance animal boa constrictor, "Snuggles", who assists him by predicting seizures.



Sadie the Assistance Parrot

- Bird trained herself.
- Helps control man's psychotic behavior.
- "You're all right, Jim! Calm down Jim!"
- OCR complaint against dental hygiene school where he got his teeth cleaned.



Richard the Comfort Monkey

- Missouri Case
- Assistance for anxiety and agoraphobia.
- Plaintiff did not prove she had a disability as she had only "mild limitations".
- An animal that simply provides comfort or reassurance is equivalent to a household pet and does not qualify as a service animal under the ADA.



New ADA Regulations: 28 C.F.R. Sec. 35.104 et seq.

Effective Date: March 15, 2011

Service Animal = Dog/Miniature Horse



Why A Miniature Horse?

- No larger than some big dogs
- Much longer life span
- Stronger than a dog
- Effective for larger individuals
- Are able to be housebroken



Considerations Allowing for Miniature Horses

- Can the facility accommodate the type, size, and weight of the horse?
- Does the handler have sufficient control?
- Housebroken?
- Does the horse's presence in a specific facility compromises legitimate safety requirements?
 - CFR 35.136 (i)(2)



Would the real Miniature Horse please step forward? Dwarf, Pygmy, Donkey



What Kind of Dog?

- "any dog that is individually trained to do work or perform tasks for a disabled person."
 - physical, sensory, psychiatric, intellectual or other mental disability.
 - Does not have to be trained by a professional service dog training program.
 - Does not include service animals in training.



Two Assistance Animals?



YES!

- To perform different tasks
 - A person with a visual disability and a seizure disorder may have two animals for each task.
- Or, for the same task
 - A person may need two dogs to assist her with stability when walking.



Who gets voted off the Island?

- "Other species of animals such as monkeys, ferrets, and reptiles are not recognized as service animals for the purpose of these regulations."




<p>Emotional Support Animals</p> <ul style="list-style-type: none"> • Provide comfort or companionship 	<p>vs.</p>	<p>Psychiatric Service Animals</p> <ul style="list-style-type: none"> • Perform tasks <ul style="list-style-type: none"> • Reminds to take medication, • performs safety checks or room searches for persons with PTSD, • interrupts self-mutilation, • removes disoriented persons from dangerous situations
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Emotional Support Exception

- May qualify as a reasonable accommodation if necessary for the student to receive a FAPE even though it would not be considered a service animal under Title II.
- The IEP team would decide whether to allow an emotional support animal on a case-by-case basis



Is this *really* a service animal?

<p>What may be asked:</p> <ol style="list-style-type: none"> 1) Is the animal required because of a disability? 2) What work or task is the animal trained to perform? 	<p>What may not be asked:</p> <ol style="list-style-type: none"> 1) For documentation of certification, training, or licensing. 2) If it is readily apparent then no questions may be asked.
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Duties for a District

- Must permit service animals in all areas where members of the public are allowed to go.
- Must **modify** policies, practices, and procedures to permit the use of service animals by individuals with disabilities. 28 CFR § 35.136 (a)
 - May include on school bus.



Care and Supervision of Service Animals

- ADA Regulations require that service animal be under the control of its handler at all times.
- Harness or leash required.
- "Handler" not defined.
- Handler required to supervise and care for animal, including feeding and caring for dog's needs.
- School District is not responsible for care and supervision of animal.

Who is Handler?



- Student?
- Handler might not be disabled person.
- Student confidentiality with handler present.
- Compliance with District's school visitor policy?
 - Background check?



Providing Accommodations



- *Alboniga v. School Board of Broward County Fla.*, 87 F. Supp. 3d 1391 (SD Fla. 2015).
- A.M. has multiple disabilities needs assistance with all daily activities.
- Service dog, Stevie, required to alert and assist A.M. when having seizures



Alboniga-Accommodating Students

- The District was required to assist the student by taking the dog out to relieve himself.
- Accommodating student vs. accommodating the dog.



Gates-Chili Central SD, 65 IDELR 152 (2015)-Handlers

- District refused service dog unless D.P.'s parent provided a full-time handler
- District ordered to:
 - Allow D.P. to act as the handler
 - Direct staff to provide reasonable modifications to assist child to give voice commands and tethering dog



When Can Service Animal be Excluded?

- When animal *is out of control* and handler does not take effective action to control.
- Commentary suggests that animal can be excluded if it poses a *direct threat* to health or safety of others.
- If the animal is *not housebroken*.
- If presence of animal would require a *fundamental alteration* of the school program or activity.

Effect of Service Animal on other students and staff

- DOJ Technical Assistance: "Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service dogs."
- DOJ Technical Assistance: When person with dog allergy and person with service dog are in same room, they both should be accommodated by moving them to different locations within the room or different rooms.

Accommodate vs. Health and Safety Risk

- How do you square the competing requirements— "Allergies and fear of dogs are not valid reasons. . ." with the health risk to a highly asthmatic student.
- Start with trying to accommodate— is there another classroom that will work for either the allergic student or the disabled student?



Local Rules

- Vaccinations
- Licensing
- Registration
- Prohibited breeds
 - Still can't be a direct threat



Parents With Service Animals

- Hillsboro School District, 59 IDELR 82 (2012)
- Parent with a disability complains the district discriminated against her from prohibiting her from volunteering.
- Limited her volunteering to areas away from staff and children.
- Required parent to provide letter detailing need for service animal and proof of insurance.



Hillsboro- OCR Findings

- Asking for insurance for her service animal=discrimination
 - Treated the parent differently
- Placing additional conditions and requirements
 - Effectively prevented Parent from volunteering.



Who Pays for the Service Animal?

- May not ask or require to pay a surcharge even when:
 - people accompanied by pets are required to pay fees.
 - to comply with requirements generally not applicable to people without pets.



BUT!

- If the public entity normally charges people for damage they cause, a person may be charged for the damage caused by his or her service animal



Alboniga- Surcharges

- School also required Abloniga to provide liability insurance for the service animal and more vaccinations than Florida state law required.
- Court found the insurance and vaccinations costs constituted surcharge that other students weren't required to pay.



New Supreme Court Case

– *Fry v. Napoleon Community Schools*,
137 S.Ct. 742 (2017)

- Student who's cerebral palsy limits her motor skills and mobility
- Goldendoodle, Wonder, assists her with life activities



Fry-School Refuses Service Dog

- School refused request for Wonder to attend kindergarten with student
- Her IEP already gave her one-on-one support through a human aide that did the same things that Wonder did.



Fry- Complaints Filed

- Filed a complaint with OCR
- OCR agreed with Parents.
- Parents file a suit in federal court.
- The District claims the Frys did not exhaust the IDEA's administrative procedures first.



Fry- Holding

- Parents may not need to exhaust their administrative remedies before pursuing a Section 504 and Title II claims against a school district that exclude their child's service dog from school.



Fry- Lessons Learned

- IDEA's exhaustion requirement only applies when the **gravamen** of the complaint is a denial of a FAPE



Fry- Determining When Fry Applies

- Whether the gravamen of a complaint against a school concerns the denial of a FAPE:
 1. Could the student assert the claim against a public entity other than a school?
 2. Could an adult, such as an employee or visitor, assert the same claim against the district?



If Yes...

- The claim is unlikely to involve a denial of FAPE.



Process for Considering Service Animals

- 1) Is the animal excluded from the definition?
- 2) Does the animal actually work or perform tasks for the student?
- 3) Is the sole purpose of comfort or emotional support?
- 4) Does the animal pose a direct threat?



Employees who want service animals at work

- ADA Title I is different than Title II.
 - Title 1 requires "reasonable accommodation. No automatic right to a service animal as a reasonable accommodation.
 - Title I does not define "service animal".
 - Employer must engage in interactive process to determine reasonable accommodation.



EEOC v. CRST Int'l, 2017 US Dist. LEXIS 180761 (2017)

- EEOC files complaint against employer who refused to allow truck driver to bring service dog to work.
- Service dog helped control anxiety and PTSD symptoms.
- CRST had a "no pet" policy.
- Still pending– Decision on venue only.



What about employee who trains service dogs?

- No legal protection under ADA Title I.
- ORS 659A.143: Legal protection for Assistance Animal Trainer in a place of public accommodation.



Questions?

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