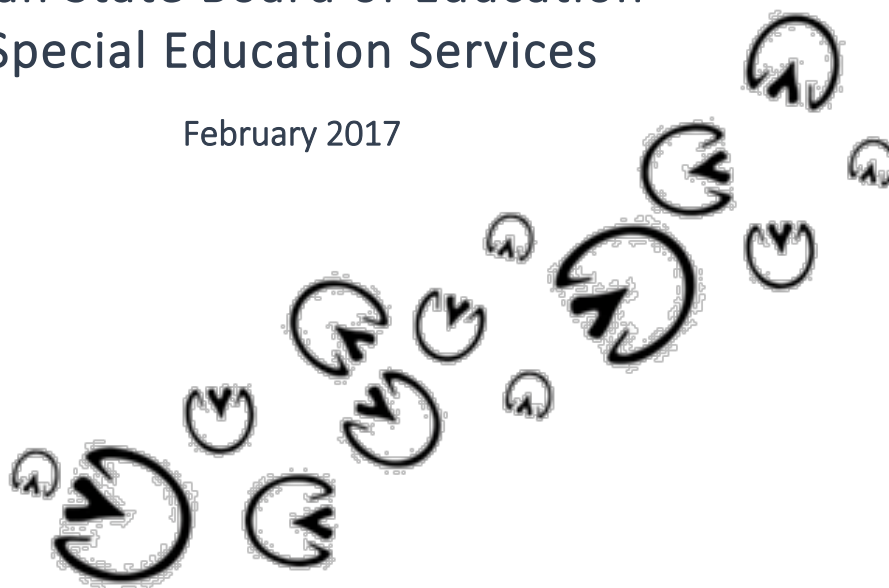




SERVICE ANIMALS IN SCHOOLS: LEGAL REQUIREMENTS AND TECHNICAL ASSISTANCE

Utah State Board of Education
Special Education Services

February 2017



FEDERAL AND STATE LAW REQUIREMENTS FOR SERVICE ANIMALS

TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA)

Definition of Service Animal Under Title II of the ADA

The 2010 Title II regulations define “service animal” as follows:

Service animal means 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 (28 CFR § 35.104).

Animals Other Than Dogs

The 2010 revised ADA Title II regulations limit this definition to include only dogs as service animals, with the exception of miniature horses in some circumstances. Although the revision does not detail the circumstances or work a miniature horse can perform, a public school must consider the exception carved out in the federal regulations if the horse “has been individually trained to do work or perform tasks for the benefit of an individual with a disability” (28 CFR §35.136(i)(1)).

Access

The Department of Justice (DOJ) also revised the ADA Title II regulations to require all public entities, such as local education agencies (LEAs) and public schools, to “modify [their] policies, practices, or procedures to permit the use of a service animal by an individual with a disability” (28 CFR §35.136(a)).

Exclusion

The ADA Title II regulations specify the circumstances under which the removal or exclusion of a service animal is allowable. Specifically, an LEA may request an individual with a disability to remove a service animal from the LEA’s property if:

- (1) The animal is out of control and the animal's handler does not take effective action to control it; or
- (2) The animal is not housebroken.

Title II requires any LEA that properly excludes a service animal under 28 CFR § 35.136(b) to provide the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

Allergies of a teacher or another student are not an allowable reason to remove or exclude a service animal. Instead, the LEA must address both the needs of the person with the allergy and the person with the service animal and determine reasonable accommodations for both.

Factors for Compliance

Title II also details several requirements that all public entities must consider. The following list summarizes several key factors regarding the requirement to allow service animals to support students with disabilities in public schools:

- **Must be under control.** In order to qualify as under control, a service animal must “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)).
- **Care or supervision.** Generally, an LEA is not responsible for the direct care or supervision of a service animal and places full responsibility for care and supervision on the handler or owner. Title II does not release LEAs from their responsibility to provide accommodations to the student, if needed, to support the student in handling the service animal.
- **Training and documentation.** There is no requirement that the users of service animals possess formal certifications from trained professionals or certified programs. Service animals also are not required to wear any specific equipment that identifies them as service animals (e.g., harnesses or vests). The only document requirement is that owners of service animals must be able to demonstrate that their service animal is in compliance with public health and local animal control requirements.
- **Inquiries.** An LEA may not inquire about the nature or extent of a person's disability, but may ask the following two specific questions to determine whether an animal qualifies as a service animal, unless it is apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog demonstrates guiding an individual who is blind or the dog navigates an individual's wheelchair):
 - (1) Is the animal required because of a disability?
 - (2) What work or task has the animal been trained to perform?

An LEA may not require documentation, such as certification of training or licensing as a service animal.

- **Access to areas of the premises.** Individuals with disabilities must be allowed to have their service animals in all areas of an LEA's facilities where any member of the public is given access.
- **Fees.** An LEA may not charge an individual with a disability a fee to be accompanied by a service animal. The public entity may charge an individual with a disability for damage caused by his or her service animal, if the entity normally charges individuals for any damage they cause.

Section 504 of the ADA

Section 504 prohibits discrimination against a student based on a disability. The Office for Civil Rights (OCR) has determined that forbidding the use of service animals in school would violate the law if a student with disabilities was effectively denied the equal opportunity to benefit from an educational program. Accordingly, the use of a service animal may be determined necessary as a disability-related service or accommodation on a 504 plan.

IDEA

The Individuals with Disabilities Education Act (IDEA) requires that all students with a disability receive a free appropriate public education (FAPE). In some cases, an Individualized Education Program (IEP) team may determine that a service animal is a necessary related service or accommodation to provide a student with a FAPE above and beyond the student's right to be supported by a service animal under Title II of the ADA.

UTAH STATE LAW

DEFINITION OF SERVICE ANIMAL UNDER UTAH STATE LAW

Utah's definition of "service animal" was amended in 2009 to align more closely with the federal definition under Title II of the ADA, and includes:

Any dog that is trained, or is in training, 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; performs work or tasks, or is in training to perform work or tasks, that are directly related to the individual's disability, including: assisting an individual who is blind or has low vision with navigation or other tasks; alerting an individual who is 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 an individual to the presence of an allergen; retrieving an item for the individual; providing physical support and assistance with balance and stability to an individual with a mobility disability; or helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors (UCA 62A-5b-102).

The definition of "service animal" in Utah does **not** include:

An animal other than a dog, whether wild or domestic, trained or untrained; or an animal used solely to provide: a crime deterrent; emotional support; well-being; comfort; or companionship (UCA 62A-5b-102).

Despite Utah restricting service animals to only dogs, an LEA must allow the exception carved out in the federal regulations for the consideration of miniature horses as service animals, if the horse "has been individually trained to do work or perform tasks for the benefit of an individual with a disability" (28 CFR § 35.136(i)(1)).

LOCAL ANIMAL CONTROL LAWS

Generally, local animal ordinances apply to service animals, including rabies immunization, licensing, and a response to animal bites and nuisance. Vaccine records are not required. The local animal services agency can provide details regarding the specific local ordinances that apply in the local area. If a local ordinance conflicts with state or federal law, the state or federal law governs.

TECHNICAL ASSISTANCE: CONSIDERATIONS FOR LEAS AND IEP TEAMS

To ensure compliance with service animal requirements under Title II of the ADA, LEAs should develop and implement policies and procedures for the school setting.

LEAs should review recent case law, OCR decisions, and possibly consult with Risk Management or legal representation during the development of their policies.

SAMPLE SERVICE ANIMAL POLICY COMPONENTS

- **Purpose.** In the policy, articulate a clear purpose related to upholding the rights of and preventing discrimination against people with disabilities as defined under the ADA.
- **Definitions.** Provide an explicit definition of a “service animal” in accordance with the federal and state law. Within the definition, specify the restrictions in place for service animals (e.g., service animals must perform work or tasks related to the disability). Also specify the restrictions that cannot be put in place for service animals (e.g., service animals are not restricted by breed, size, or weight, and work of service animal does not include emotional support or crime deterrent effects).
- **Guidelines and Procedures.** Provide the steps to follow within an LEA when an individual brings a service animal to school or school functions, and define the procedure, including responsibilities of committees and/or designated authorities for making decisions regarding service animals. Include explanation of any requirements for owners of service animals. Specify actions if someone has an allergic reaction to a service animal. Identify how and when school personnel will be trained. Include a timeline for responding to a request regarding a service animal.
- **Management.** Provide a general expectation for “being in control of its handler.”
- **Care and Responsibility.** Provide a general expectation of care and responsibility, such as the service animal being housebroken, fed, and supervised.
- **Liability.** Define liability for damage and/or injury.
- **Removal and Exclusion.** Define the circumstances under which a service animal can/will be removed or excluded from the school setting.
- **Complaint Procedures.** Define a complaint procedure, including an appeals process when requests are denied, or service animals are removed.

NOTE: These components are provided as examples only and do not explicitly represent each of the requirements for service animals under Title II of the ADA. Refer to 28 CFR Part 35 for the full-text regulations addressing discrimination, service animals, and other relevant regulations.

FREQUENTLY ASKED QUESTIONS (FAQs) ABOUT SERVICE ANIMALS IN SCHOOLS

- What are the key features that define an animal as a service animal under Title II of the ADA?
 - A service animal must be:
 - A dog, or in some cases a miniature horse,
 - Individually trained to perform specific work or tasks, and
 - Supporting work or tasks directly related to a person’s disability.
- Does Title II define service animals only as dogs?
 - The 2011 revisions of Title II of the ADA restrict the definition to dogs only, yet made a new, separate provision for miniature horses, if the miniature horse is:
 - Individually trained to perform work or tasks,
 - Housebroken,
 - Under the owner’s control,
 - Of the type, weight and/or size to be accommodated in the facility, and
 - Not a legitimate safety concern for the safe operation of the facility.
- What is the definition of “work” and “tasks” under Title II of the ADA?
 - The service animal must be trained to perform specific actions in response to specific needs of a person with a disability (e.g., service dog is trained to and able to physically prompt a student that he or she is about to have a seizure).
- If the work or task is defined as emotional support or therapy, does that constitute allowable work as a service animal?
 - No. A service animal must perform specific work or tasks related to the person’s disability.
- If a parent requests a service animal to prevent a student from running away/elopement, does that constitute allowable work as a service animal?
 - It depends. If the student demonstrates a pattern of running away/elopement and the service animal is able to perform this task safely and effectively, the answer would be “yes.” If the parents make this request as a preventive service, when the student has not demonstrated a pattern of running away/elopement at school, the answer may be “no.”
- If a parent requests a service animal to perform work or a task that can be performed by someone in the school, does that constitute allowable work as a service animal?
 - Yes. The LEA cannot deny a student access to a service animal that performs work or a task related to the disability simply because someone can perform the same task.
- If another student or individual in the school has an allergy to the service animal, is that a reason to deny access to a service animal at school?
 - No. The LEA is responsible for addressing both individuals’ needs without priority to either person. A reasonable accommodation must be made for both students that

does not prohibit equal access to the full range of services and amenities in the facility.

- If state law or LEA policy articulates more restrictive definitions than Title II, must an LEA consider a request that does not comply with Title II?
 - Yes. The LEA may consider the unique circumstances of a request that falls outside of Title II of the ADA but ensure compliance with Title II.

CASE LAW AND RESOLUTION AGREEMENTS RELATED TO SERVICE ANIMALS IN SCHOOLS

FROM THE COURTS

(1) ***Alboniga v. School Bd. of Broward County, Fla., 65 IDELR 7 (S.D. Fla. 2015).***

A six-year-old boy with multiple disabilities required a service dog that was trained to notify others when he was about to experience a seizure. The service dog also performed the task of stabilizing the student during the seizure. The service dog was tethered to the student's wheelchair while at school. Due to the student's multiple severe disabilities, the district assigned a support staff member to help the student take the service dog outside for breaks. The district argued that the staff member's help constituted "care and supervision" of a service animal and asked that the parent provide a handler. The court decided that a Florida LEA must assist a student with a disability while he cares for and supervises his service animal.

It is important to consider whether work performed by staff of an LEA constitutes "care and supervision" of a service animal, or constitutes an accommodation for a student. Also, observe the ADA's "presumption of access" in terms of service animals, being careful not to create logistical barriers that may be perceived as prevention of access. Finally, avoid assigning arbitrary definitions to what it means for a handler to keep an animal in control. An LEA should not apply specific definitions (such as tethering) as a general rule or policy for the access of service animals.

(2) ***C.C. by and through Milka CIRIACKS v. CYPRESS SCHOOL DISTRICT (CA), et al., 56 IDELR 295 (U.S. District Court, 2011).***

A school district was ordered to permit a six-year-old with autism to bring his dog to school while the parents' discrimination claims against the district were pending. The dog was specially trained to prevent the child from "shrieking, throwing tantrums, and eloping," and the court determined that those functions qualified the dog as a service animal under the ADA, rather than merely as an emotional support animal, which is not allowed under the ADA. The court observed that the dog provided a reasonable accommodation for the child since it did not fundamentally alter the district's autism program, or present a safety or health risk. The court stated that "[The parents have] sufficiently shown that keeping [the child] and [the dog] apart during school hours will disrupt the service dog relationship."

FROM THE OFFICE OF CIVIL RIGHTS (OCR)

(1) ***Bakersfield (CA) City Sch. Dist., 50 IDELR 169 (OCR 2008).***

OCR determined that a district violated Title II and Section 504 by unilaterally determining that a student's dog presented a health and/or safety risk and excluded the dog from school. The district did not follow any procedure to review the dog's training or role in supporting the student's disability-related needs and determine the dog's status as a service animal.

Create policies and procedures for reviewing requests for service animals. LEAs should observe the ADA's "presumption of access" in terms of service animals and be careful not to make unilateral decisions that disregard an individual's rights under Title II.

(2) ***Alpine (CA) Union Elementary School District (OCR 2012).***

A grandparent of a student complained that the district discriminated against him on the basis of disability by not allowing him to fully participate in the end-of-year celebration due to the presence of his service animal. The revision of Title II of the ADA required that districts modify policies, practices, and procedures to allow service animals when necessary to support a student's disability-related needs, unless the modifications would "fundamentally alter the nature" of a service or activity. A school district resolved the OCR complaint by agreeing to revise its policy and provide district-wide training to its staff regarding service animals and Section 504.

Ensure that your LEA has updated policies, procedures, and practices that reflect the revisions of Title II of the ADA, and that your LEA adheres to those policies, procedures, and practices to avoid discrimination and FAPE claims.

EXAMPLE SCENARIOS

The scenarios in this section provide examples of best practices for LEAs when facilitating the use of service animals for students with disabilities.

Scenario 1—Student with Multiple Disabilities and a Seizure Disorder. The use of a service animal at school is requested by the parent of a seven-year-old student with cerebral palsy who is quadriplegic and has a seizure disorder. The student also has an IDEA classification under the Multiple Disabilities category and has an IEP that addresses his mild cognitive impairment, learning needs, physical needs, and health needs. The student uses eye gaze to give basic verbal prompts to the dog. The dog is tethered to the student’s wheelchair at all times. The service animal is trained to detect an impending seizure and notify personnel prior to its onset to better prepare personnel to deal with any seizure activity. Although the service dog is housebroken, it requires that the student take it out for one break during the school day, during which it must be taken outside to an area to urinate and be given some water. The student has had a paraeducator assigned to him for mobility, positioning support, and toileting. The paraeducator has been trained to respond to the onset of seizures. While the student can manage the dog through prompts, taking the dog outside to the courtyard requires assistance from the paraeducator or some assigned personnel to open doors, maneuver wheelchair access, and help the student to get water for the dog.

Best Practice Response: The LEA first references its policy and follows all steps for considering the request for a service animal outlined in accordance with the Title II and 504 requirements of the ADA, as well as the IDEA (since the student has an IEP). The LEA determines that the dog meets the definition of a service animal because it performs a specific task related to the student’s disability: detecting seizures and notifying personnel. The LEA then allows the dog to accompany the student and considers whether the animal is under the control of its handler (the student). The LEA determines that the dog responds to the verbal prompts made by the student’s computer speaker and does not disrupt the environment or pose any threat or harm to others (although another student has an allergy to dogs). Next, the LEA makes adjustments by assigning the student with an allergy and the student with a service animal to separate second grade classrooms and determines strategies to prevent exposure of the animal dander to the student with an allergy. Last, the LEA determines that the paraeducator assigned to the student will assist the student with exiting the building and providing water to the dog as an accommodation to the student. The IEP team convenes and determines that the accommodation and support that the paraeducator provides in relation to the service dog should be documented in the program modifications and supplementary aids and services section of the IEP along with the other support the paraeducator provides to the student.

Scenario 2—Student with Post Traumatic Stress Disorder Prone to Anxiety Attacks. A 15-year-old general education student who has recently been diagnosed with post-traumatic stress disorder and severe anxiety requests a service animal at school. The student is prone to severe anxiety attacks that cause her to hyperventilate and sometimes manifest what her physician has labeled “pseudo-seizures.” During a seizure, the student experiences hyperventilation,

fluctuations in heart rate, and sometimes loss of consciousness. The student’s parents have worked with an outside agency to experiment with a service dog trained to calm the student when she is experiencing an onset of an anxiety attack. The dog is able to detect the agitation of the student and prompt her to engage in petting, combing, and holding activities with the dog as a means to interrupt the onset of an anxiety attack.

Best Practice Response: In response to notification of the student’s disorder and needs, the LEA convenes a 504 committee to determine all of the student’s needs and possible 504 eligibility to address the needs. At the same time, the LEA references its policy and follows all steps for considering the request for a service animal outlined in accordance with the Title II and 504 requirements of the ADA. The LEA determines that the animal meets the definition of a service animal and not an “emotional support” animal because it performs a specific function: to interrupt the onset of an anxiety attack. The LEA also notes that the student (as the dog’s handler) is in control of the animal independently, without the use of a leash to tether the animal. The 504 committee documents several accommodations in a 504 plan for the student, such as sensory breaks, check-ins with the counselor, and some emergency procedures. The 504 committee also documents the details for use of the service dog on the 504 Plan.

Scenario 3—Student with Emotional Disturbance and Mood Disorder. The use of a service animal at school is requested by the parents of an eight-year-old student with an emotional disturbance and mood disorder. The student demonstrates a pattern of engaging in frequent tantrums, verbal and physical aggression with teachers and peers, poor relationship building in general, and a refusal to follow directions in response to requests and directives. To address the student’s behavior needs, the IEP documents the use of direct social skills training, support from the psychologist, and paraeducator support to prompt and redirect the student when he engages in problem behavior. The student’s behavior has improved over the year under the current IEP. The parents experience similar behavior patterns in the home and have sought the support of a service animal agency in an effort to help the student practice building relationships and provide him with emotional support. The parents have seen some benefit from having the dog at home and want to extend the benefit to the school setting.

Best Practice Response: The LEA first references its policy and follows all steps for considering the request for a service animal outlined in accordance with the Title II and 504 requirements of the ADA (as well as the IDEA since the student has an IEP). The LEA determines that the use of the dog does not meet the definition of a service animal under Title II of the ADA because it does not perform specific work or tasks related to the student’s disability. They note that the use of the animal can be more appropriately described as “emotional support” rather than “service.” The LEA also considers that the IEP currently addresses the student’s behavioral needs and that the student is showing progress in response to the supports. Because the animal does not meet the definition of a service animal, the LEA does not consider or speculate whether the handler would maintain control of the animal.