

**Florida Department of Education  
Bureau of Exceptional Education and Student Services  
Updated Guidelines and Template for School District Policy,  
Practice and Procedures for the  
Use of Service Animals by Students with Disabilities  
2015**

On March 15, 2011, the U.S. Department of Justice (DOJ) finalized regulations promulgated under Title II of the Americans with Disabilities Act (ADA) regarding the use of service animals in governmental settings, including public schools. Before the ADA regulations became final, the Governor’s Commission on Disabilities recommended in 2010 that the Florida Department of Education (FDOE) provide guidance to school districts addressing this issue. As a result, FDOE issued initial guidance to school districts in August 2010. Since that initial guidance was issued, however, further guidance has been provided by courts, the Office for Civil Rights (OCR) and DOJ that impacts the initial guidance provided by FDOE. Therefore, these updated guidelines are necessary, and the initial guidance issued in August 2010 should not be used at this time.<sup>1</sup>

**Legal Sources and References**

The information provided in these Guidelines relies on the legal standards as set forth in Title II of the ADA and its regulations. The ADA is a federal civil rights law prohibiting discrimination on the basis of disability. Thus, the primary legal references herein will be the ADA and its Title II regulations, as well as a Guidance and Analysis document issued by the DOJ on September 15, 2010.<sup>2</sup> Also relied upon will be current court, OCR and DOJ interpretations of the ADA’s requirements as they relate to the use of service animals by students with disabilities.

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<sup>1</sup> It is important to note that employees also make requests to bring service animals to school. Accommodating an employee’s request, however, is beyond the scope of this guidance.

<sup>2</sup> This document is entitled “Nondiscrimination on the Basis of Disability in State and Local Government Services” and can be found at the ADA.GOV website or by using the following link: [http://www.ada.gov/reg2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/reg2010/titleII_2010/titleII_2010_regulations.htm). This document will be referenced herein as “DOJ Guidance and Analysis.”

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**A Sample Template for Policy, Practice and Procedure**

The following template is designed to provide a general framework for the required components of local school board policy, practice and procedure in the instance of a request for a student's service animal to accompany the student to school.

**Important Note: In all instances, a school district should involve legal counsel for input and approval in the process of developing or modifying its current policies, practices or procedures for addressing requests related to service animals and students and applying them in an individualized case-by-case fashion when faced with questions or issues related to an individual situation.**

**I. Introduction and Overriding Principles**

The ADA regulatory mandate is a general mandate for public entities, like schools, to modify their policies, practices and procedures to permit an individual with a disability to use their service animal.<sup>3</sup> It does not mandate that schools provide service animals for use, pay for, care for or train them, or otherwise ensure that an individual with a disability has a service animal. Thus, this issue is not generally considered one related to the provision of a service or a free appropriate public education (FAPE) to a student either under the ADA, Section 504 of the Rehabilitation Act (Section 504) or the Individuals with Disabilities Education Act (IDEA). Rather, it affords a student with a disability who has a service animal the accommodation of being accompanied by the service animal at school. This overall concept should be emphasized in a school district's procedures and in training of school personnel to appropriately respond to requests related to service animals.

In addition, the following introductory and overriding principles should be considered for incorporation into procedures and training.

- There are only two questions that may be asked and answered when a request to allow a student to bring his or her service animal to school is made: 1) whether the student for whom the request is made is an individual with a disability; and 2) whether the service animal meets the definition of "service animal" under the law. A student determined to be a student with a disability under the IDEA or Section 504 would be an individual with a disability.
- According to OCR and DOJ, whether a student with a disability may bring his or her service animal to school does not depend upon whether the animal is necessary to provide the student FAPE (e.g., it does not matter that the student's paraprofessional can provide the student the same assistance).

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<sup>3</sup> 28 Code of Federal Regulations (C.F.R.) § 35.136(a).

- The fact that other students or school staff have allergies to, or a fear of the animal, is not relevant to the inquiry, according to DOJ.
- Under the ADA, service animals must be harnessed, leashed or tethered, unless these devices interfere with the service animal's work, or the individual's disability prevents the use of these devices. In that case, the individual must maintain control of the animal through voice, signal or other effective controls.
- Certification or proof of service animal training, licensing or things such as immunization beyond the required rabies vaccination<sup>4</sup>, health or cleanliness cannot be required in the process of determining whether a request will be granted. However, such information may be requested.
- The only allowable reasons for denying a proper request for a service animal to attend school with a student with a disability or asking that a service animal be removed from school premises are: 1) the animal is out of control and the animal's handler does not take effective action to control it; 2) the animal is not housebroken; 3) the animal's presence poses a "direct threat" to the health or safety of others, based upon an individualized assessment; or 4) the animal's presence would constitute a "fundamental alteration" to the nature of the services, program or activity provided by the school.<sup>5</sup>

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<sup>4</sup> § 828.30, Florida Statutes.

<sup>5</sup> §§ 35.130(b)(7), 35.139; 28 C.F.R. pt.35, app. A, § 35.104 at 600, §35.136 at 608 (July 1, 2014).

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**II. Definitions and Examples to Include in Procedures**

Pertinent definitions or examples of terms, such as “disability,” “service animal” and “work or tasks,” should be included in procedures.

Definition of “disability”

**Disability** means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase **physical or mental impairment** means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase **physical or mental impairment** includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase **physical or mental impairment** does not include homosexuality or bisexuality.

(2) The phrase **major life activities** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Definition of “service animal”

The ADA regulations define a “service animal” as “**any dog** 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.”<sup>6</sup> It should be noted that there are no size or weight limitations as it relates to dogs as service animals, and DOJ has determined that “such limitations would not be appropriate.”<sup>7</sup>

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<sup>6</sup> 28 C.F.R. § 35.104 (emphasis added).

<sup>7</sup> DOJ Guidance and Analysis, p. 81.

As DOJ has noted, service animal requests have ranged nationally from pigs and miniature horses to snakes, iguanas and parrots. As a result, DOJ clarified that all wild animals (including monkeys), whether born or bred in captivity or in the wild, were eliminated from coverage as service animals, as well as other “common domestic animals,” since those were hard to define.<sup>8</sup> In essence, DOJ decided that it was easier to limit coverage to dogs, which are the most common service animals used by individuals with disabilities. This is why the regulatory definition provides that “[o]ther species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.”<sup>9</sup>

While the ADA regulations do not include miniature horses in the definition of “service animals,” they do require school districts to make reasonable modifications in 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.<sup>10</sup>

In the unlikely event that the request is made that a student be accompanied by a miniature horse, school districts are to consider: (1) the type, size and weight of the horse and whether the facility can accommodate these features; (2) whether the handler has sufficient control of the miniature horse; (3) whether the miniature horse is housebroken; and (4) whether the miniature horse’s presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.<sup>11</sup> In addition, all of the other requirements discussed here which apply to service animals that are dogs “shall also apply to miniature horses.”<sup>12</sup>

#### Definition and examples of “work or tasks”

“Work or tasks” performed by a service animal are not specifically defined under the ADA regulations, but examples are provided. First, the regulatory definition of “service animal” provides that whatever the “work or task” is, it must be “directly related to the individual’s disability.”<sup>13</sup> In addition, the regulatory definition provides examples of “work or tasks” to include, “but not be 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

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<sup>8</sup> DOJ Guidance and Analysis, p. 79.

<sup>9</sup> 28 C.F.R. § 35.104.

<sup>10</sup> 28 C.F.R. § 35.136(i).

<sup>11</sup> 28 C.F.R. § 35.136(i)(2).

<sup>12</sup> 28 C.F.R. § 35.136(i)(3).

<sup>13</sup> 28 C.F.R. §35.104.

persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.<sup>14</sup>

This list of examples of “work or tasks” is not all-inclusive. For instance, a Diabetic Alert Service Dog (i.e., a dog that gives a trained signal to alert its partner to low or high blood sugar levels) performs “work or tasks” for a diabetic student. Similarly, DOJ has noted that “actively cuing by nudging or pawing an individual to alert to the onset of an episode and removing the individual” from an “anxiety-provoking” environment could be “work or tasks” for someone with post-traumatic stress disorder (PTSD).<sup>15</sup>

DOJ has also addressed whether an animal that is trained to “ground” a person with a psychiatric disorder “does work or performs a task” by stating:

It is the Department’s view that an animal that is trained to “ground” a person with a psychiatric disorder does work or performs a task that would qualify it as a service animal as compared to an untrained emotional support animal whose presence affects a person’s disability. It is the fact that the animal is trained to respond to the individual’s needs that distinguishes an animal as a service animal. The process must have two steps: Recognition and response. For example, if a service animal senses that a person is about to have a psychiatric episode and it is trained to respond for example, by nudging, barking, or removing the individual to a safe location until the episode subsides, then the animal has indeed performed a task or done work on behalf of the individual with the disability, as opposed to merely sensing an event.<sup>16</sup>

Further examples provided by DOJ include tasks performed by “psychiatric service animals,” which “may include reminding the individual to take medicine, providing safety checks or room searches for persons with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations.”<sup>17</sup>

The regulatory definition of “service animal” also provides examples that **do not** constitute “work or tasks.” Specifically, the regulation provides that “[t]he crime deterrent effect of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.”<sup>18</sup>

DOJ has also provided the following “caution:”

[U]nless the animal is individually trained to do something that qualifies as work or a task, the animal is a pet or support animal and does not qualify for coverage as a service animal. A pet or support animal may be able to discern that the individual is in distress, but it is what the animal is

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<sup>14</sup> 28 C.F.R. § 35.104.

<sup>15</sup> DOJ Guidance and Analysis, p. 77.

<sup>16</sup> DOJ Guidance and Analysis, p. 78.

<sup>17</sup> DOJ Guidance and Analysis, p. 83.

<sup>18</sup> 28 C.F.R. § 35.104.

trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal.<sup>19</sup>

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<sup>19</sup> DOJ Guidance and Analysis, p. 78.

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**III. Guidelines for Addressing a Service Animal Request**

School districts should develop specific procedures that foster collaboration between the school, student, and parent to address service animal requests and should consider the inclusion of the following components in those procedures:

- a. A timely process for initiating a request that a student be allowed to bring a service animal to school

School districts should have in place a reasonable, clear and consistent process for individuals to follow to initiate a request to bring a service animal to school. This should include components such as:

- The identification of a district contact person to whom a request is to be made;
- Any forms or documents that a requesting individual must complete and conditions related thereto (e.g., a reasonable timeline for making a request prior to bringing the dog to school);
- An application that specifies the kind of animal, the disability at issue, the work or tasks performed;
- A list of any documents or other information that is requested by the school district (but that may not be required—such as proof of service animal training, licensing, immunization, or cleanliness). Although DOJ has indicated that a school district may not “require” such documentation regarding certification, training or licensing, the language of the ADA regulations is not specific to schools; nor does it **prohibit** school districts from **asking for** that information. While most individuals would not have an issue with providing this information, it is important to note that the failure to provide it cannot be the sole reason for denying the student the right to use the service animal at school; and
- A service animal agreement for parent(s) to sign acknowledging understanding of the fact that if the animal is out of control, is not housebroken, is a direct threat or results in a fundamental alteration to the program, services, or activities of the school, the district may request that the animal be removed, in addition to an agreement to assume responsibility for any damage or injury that the animal may cause. (DOJ has indicated that this information cannot be **required** up front, but the ADA regulations provide that if a public entity charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by their service animal).<sup>20</sup>

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<sup>20</sup> 28 C.F.R. § 35.136(h).



b. A process for making decisions and approving or denying a request for a student to bring a service animal to school

School districts should have in place a clear and consistent process for making decisions to approve or deny a request for a student to bring a service animal to school, including responsibilities and timelines for the following components:

- Who will make the decision:
  - Although the service animal question is not whether the student must have the animal in order to receive FAPE, it is noted that the IEP or Section 504 team may be the best choice to make the decision, because, in many cases, the team may be more knowledgeable about the student and have access to relevant data.<sup>21</sup>
  - If an IEP or Section 504 team is designated as the mechanism for making the decision, the accommodation that would be listed on the student's IEP or 504 Plan would be "allowing the student to bring his or her service animal to school" and **not** the provision of the animal itself, unless the team believes that a service animal is required to provide the student FAPE.
- Using pertinent definitions, establishing a list of qualifications that the animal must meet and questions to be addressed in making the decision. Examples of questions to be asked to determine whether the animal is a service animal:
  - Identification of work or tasks directly related to disability;
  - Identity of the handler and whether the animal is under the handler's control;
  - Whether the animal is housebroken;
  - Whether a direct threat to health or safety of others would be presented by the presence of the animal;
  - Whether any modifications or adjustments to the school environment or educational program of the student [or others] may be needed;
  - Whether a fundamental alteration in program, service or activity would occur if the animal were allowed to attend with the student. (In some cases where it may not be clear whether the animal is actually trained to or actually performs work or tasks for a student with a disability, a district may need to allow the dog to be used at school and collect data to determine whether the animal is actually a service animal).
- How the decision will be documented and relayed to the parent(s), student or other person making the request.
- Any arrangements or adjustments that are needed within the school environment before the service animal comes to school, including any adjustments needed to accommodate other students or staff who have animal allergies or fears.

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<sup>21</sup> See, e.g., *Colorado Springs (CO) Sch. Dist. #11*, 56 IDELR 52 (OCR 2010) [district should have convened an IEP team meeting to address the service animal issue rather than having an administrator unilaterally make the decision who did not have direct knowledge of the student].

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- c. A process for parent(s) to challenge a decision not to allow the use of the animal

If a decision is made not to allow the use of the animal at school, there should be a dispute resolution mechanism in place for parent(s) to challenge that decision (e.g., internal grievance procedure or, where a parent is alleging that the use of the animal is necessary for FAPE, a formal due process hearing under the IDEA or Section 504).

- d. A process for properly dealing with the service animal while it is in the school environment

If it is determined that a student will be allowed to bring his or her service animal to school or to a school activity, school districts should have a process in place for properly dealing with the service animal while at school or at a school function. This should include components such as:

- Training for staff/other students to properly respond to and address the service animal and to understand the work or tasks that it performs;
- Consultation with service animal trainer(s) or other appropriate professionals with respect to issues that may arise;
- Setting up a proper schedule and location for the handler to care for the animal's needs during the school day;
- Establishing criteria for determining whether proper circumstances exist for making a request that the animal be removed; and
- Working with the transportation department to address transportation issues, if the service animal is going to be transported via the school district's transportation system.

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**Resources:**

Americans with Disabilities Act

<http://www.ADA.gov/>

National Association of School Nurses

Position Statement: Services Animals in Schools (June 2014)

<http://www.nasn.org/PolicyAdvocacy/PositionPapersandReports/NASNPositionStatementsFullView/tabid/462/ArticleId/726/Service-Animals-in-School-Adopted-June-2014>

U.S. Department of Education

Office for Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

U.S. Department of Justice

Civil Rights Division, Disability Rights Section

[http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)

**Recent Cases and Agency Decisions:**

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

*E.F. v. Napoleon Comm. Schs.*, 62 IDELR 201 (E.D. Mich. 2014).

*M.T. v. Evansville Vanderburgh Sch. Corp.*, 62 IDELR 79 (S.D. Ind. 2013).

*School Administrative Unit #23 (NH)*, 62 IDELR 65 (OCR 2013).

*Catawba Co. (NC) Schs.*, 61 IDELR 234 (OCR 2013).

*Pasadena (CA) Unif. Sch. Dist.*, 60 IDELR 22 (OCR Cal. 2012).

*Alpine (CA) Union Elem. Sch. Dist.*, 112 LRP 49101 (OCR 2012).

*Jackson Co. (MI) Intermed. Sch. Dist.*, 59 IDELR 172 (OCR 2012).

*C.C. v. Cypress Sch. Dist.*, 56 IDELR 295 (C.D. Cal. 2011).