

Riverside County Special Education Local Plan Area

Use of Service Animals in Schools

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Introduction

Many local education agencies (LEAs – school districts, charters schools and county offices of education) recognize that animals can be an effective teaching aid and can help support the LEA's instructional program. In addition, instruction related to the care and treatment of animals teaches students a sense of responsibility and promotes the humane treatment of living creatures. While such policy is important to be maintained, now schools must address policy, procedural and responsibility/liability issues regarding the use of service animals in schools. The use of service animals must comply with all relevant federal and state laws; pertinent local ordinances, rules and regulations; and the provisions of adopted administrative regulations (AR) and board policy (BP). Requests for exceptions to any provision set forth may be presented in writing for evaluation and consideration by the LEA on a case-by-case basis.

On Sept. 15, 2010, the U.S. Department of Justice published 28 CFR Part 35 in the Federal Register its Final Rules amending Titles II and III of the Americans with Disabilities Act (“ADA”) governing the issue of service animals in schools, which became effective on March 15, 2011. The ADA and the amended regulations apply to the school districts within the SELPA and are

enforceable by the Office for Civil Rights (“OCR”) within the U.S. Department of Education. LEAs should carefully review their policies, procedures and practices to ensure that they properly align with the new federal requirements. This document is designed to provide guidance regarding the use of service animals by enrolled students with disabilities as well as use of service animals by visitors to and staff at such facilities/programs. Once approved, it is important that administrators, teachers, and other school site personnel receive training to ensure that the adopted rules and precautions are observed so as to protect students, staff, visitors, and animals.

Definitions are Important

Civil Code § 54.1 clarifies that individuals with disabilities, including students with disabilities, have the right to be accompanied by specially trained guide dogs, signal dogs, or service dogs in all public places, including schools. More than ever before, school districts are experiencing a significant increase in requests to bring service animals to school. Therefore it is very important to all involved to be familiar with the definitions of the terms used.

A “*student with a disability*” means the enrolled student meets eligibility criteria as defined in the Individuals with Disabilities Education Act (IDEA), California Education Code Title 5 Section 3030, or Section 504 of the Rehabilitation Act of 1973. A local education agency (LEA) must also give consideration to an “*individual with a disability*” employed by or visiting a campus. Protections apply to individuals who meet the disability criteria defined by Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act.

“*Service animal*” means any dog 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. [Final Regulations, ADA, 29 CFR 35.136]

- A “*guide dog*” is a dog trained by an appropriately licensed person to assist an individual with a disability.
- A “*signal dog*” is trained to alert an individual who is deaf or hearing impaired to intruders or sounds.
- A “*service dog*” is a dog individually trained to the requirements of an individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching an object.

The animal must be individually trained to do something that qualifies as “*work or tasks*”. A service animal’s job is to perform some of the functions and task that the individual with a disability cannot perform for him or herself. Work or tasks a service animal may assist a person with a disability to do may include, but are not limited to:

- Assisting individuals who are blind or have low vision with navigation and other tasks
- Alerting person with hearing impairments to sounds
- Providing physical support such as pulling a wheelchair, carrying or picking up things or helping with balance for a person with mobility impairments
- Providing non-violent protection or rescue work
- Assisting an individual during a seizure
- Alerting individuals to the presence of allergens
- Retrieving items such as medicine or the telephone
- Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors

- NOTE: When it is not obvious what service the animal provides, staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform.
- NOTE: Staff cannot ask about the person’s disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

The new ADA regulations permit the use of “*trained miniature horses*” under limited circumstances. The Department of Justice noted, however, that it excluded miniature horses from the definition of a service animal to allow for flexibility in situations where the use of such horses would not be appropriate. A LEA may consider, on a case by case basis, whether reasonable accommodations can be made to permit the use of miniature horses by an individual with a disability if such horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. Ponies and full-size horses are not covered by this provision. Miniature horses are no larger than some breeds of dogs (e.g., Great Danes, Labrador Retrievers, and Mastiffs); they can be housebroken like dogs; they are particularly effective for large stature individuals; and, they live much longer than dogs (average is more than 25 years of service). Among the factors that administrators may consider in determining whether such an accommodation can be made are the following:

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

Dogs that are trained to provide aggressive protection, such as “*attack dogs*”, can be excluded. However, the commentary specifies that breeds of dog that are “perceived to be aggressive because of breed reputation, stereotype, or the history or experience the observer may have with other dogs” cannot be excluded from schools unless: (a) The dog is out of control and the animal’s handler does not take effective action to control it; (b) The dog is not housebroken; or (c) The presence of the dog constitutes a “fundamental alteration” in the nature of the service, program, or activity.

Finally, the Code of Federal Regulations does not allow local animal ordinances to impose greater requirements or conflicting requirements than those under the federal disability law. By way of example, LEAs cannot exclude a specific breed regardless of city or county codes that impose bans on specific breeds such as pit bulls. Further, exclusions based on local animal ordinances that require animal registration or tags/markings indicating that the animal is a service dog are also not allowed.

Responsibility and Liability

The right of an individual with a disability to bring a service animal to school is not absolute. There are roles and responsibilities for the parent / student and LEA to be considered.

Student/Parent Responsibilities

The student or the parent/guardian requesting the service animal is responsible for the care and conduct of the service animal at all times. The student or parent/guardian requesting the service animal is responsible for the cleanliness of the service animal, including flea control and other protective measures for health and safety. A service animal may be ordered removed

from school premises if it is not house broken. The district is not responsible for the care or supervision of any service animal.

The student must be able to control the service animal by means of a harness, leash, or other tether, unless the student is unable to use such restraints or that the restraints would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must otherwise be under the student's control through other effective means such as voice control or signals. The owner/user of the service animal can be held as solely responsible for any damage to persons, premises or facilities caused by that service animal. 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.

The student or parent/guardian requesting the service animal can be required to complete and signed a release of liability form, which shall release the LEA from any and all liability for damage to persons, premises, or facilities caused by the service animal. If the student is under the age of eighteen (18) years old, the parent / guardian shall complete and sign the release of liability form. By signing the release, the individual, or the parent/guardian if the student is a minor, agrees to assume all liability for any and all damage to persons, premises, or facilities caused by the service animal.

LEA Responsibilities

LEA policies can require that a request must be put in writing and given to the [LEA designated person] at least 10 days prior to bringing the service animal to school or a school function. Owners of service animals requesting access to the public school and/or school sponsored events can be required to provide annual proof of vaccinations. The LEA can require that all service dogs be spayed or neutered. They can require that all service animals be (1) treated for, and kept free of, fleas and ticks and (2) be kept clean and groomed to avoid shedding and dander.

The LEA is not responsible for providing a staff member to walk the service animal or to provide any other care or assistance to the animal. Students with service animals are expected to care and supervise their animals. In the case of a young child or a student with disabilities who is unable to care for or supervise his service animal, the parent is responsible for providing care and supervision of the animal. Issues related to the care and supervision of service animals will be addressed on a case-by-case basis at the discretion of the building administrator.

LEAs must engage in an individualized, case-by-case analysis to determine whether the presence of the service animal is necessary to comply with the non-discrimination requirements under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended, as well as the provision of a free appropriate public education ("FAPE") under Section 504 and the Individuals with Disabilities Education Improvement Act of 2004.

Failing to engage in a case-by-case determination specific to the individual and his or her service animal could result in a violation of Section 504 and the ADA. This was the case in Bakersfield City School District, where the Office for Civil Rights (OCR, 2008) found that the district engaged in discrimination by denying a student's service animal request based on a unilateral determination that the animal posed a health and safety risk to other students and staff. **OCR emphasized that districts must engage in a case-specific inquiry, which may include consideration of whether "a nexus exists between the disability, the animal's function and access to the programs, activities, and/or facilities of the [district]."**

Student with a Disability

For “a student with a disability” the LEA can stipulate that the student’s or his/her parent / guardian’s request to use a service animal during the school day or for school-sponsored events is subject to certain considerations and conditions. For example, upon receiving a request, it is recommended that a team meeting for a student with an Individualized Education Program (IEP) or Section 504 plan be held as soon as possible so the team can discuss the request for a service animal to attend school and/or school-sponsored activities/events with the student. The team will need to discuss and determine whether the team has addressed the student’s educational needs in another manner that would eliminate his/her need for the service animal while attending school in order to receive a FAPE in the least restrictive environment.

Employee Request for Service Animal Support

It is important that LEA policy or administrative regulation describe the steps an employee needs to follow to request a service animal as an accommodation (e.g., required to obtain authorization through the Risk Management Office). Service animals for reasonable accommodation can be permitted based upon documentation supporting the assistance of the service animal. Authorization for reasonable accommodation to return to work with the assistance of a service animal can be required by the Risk Management Office prior to returning to work with the service animal. If authorization is not received, the LEA can refuse to allow the service animal on any LEA property and/or facilities.

Other Individual with a Disability

An “individual with a disability” has the right to be accompanied by a service animal specially trained for that person on the LEA’s property and facilities subject to the following conditions:

1. Upon request, the user of the service animal shall provide information about the specific individualized training of the animal, including what task(s) the animal performs for the individual.
2. The user of the service animal must provide evidence of proper licensure, inoculation and identification.
3. The user of the service animal is responsible for the care and conduct of the service animal at all times. The service animal must be under user control at all times. The user of the service animal is responsible for the cleanliness of the service animal, including flea control and other protective measures for health and safety.
4. The service animal shall not exhibit aggressive behavior toward staff, students, or any other individuals, may not otherwise pose a direct threat to the health and/or safety of others, and may not be disruptive to the educational environment.

If any of the above conditions are not met, the user can be required to remove the service animal and not bring the service animal back to the facility and/or program until the user has mitigated the relevant deficiency.

Administrative Steps to Follow

Title II entities have the same legal obligations as Title III entities to make reasonable accommodations in policies, practices, or procedures to allow service animals when necessary to avoid discrimination on the basis of disability, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. The courts have also ruled that reasonable accommodations shall be made for service animals used by individuals with a disability.

LEAs cannot arbitrarily deny a request for a service animal, but must consider whether granting the request would cause a danger to the student, other students, or staff, or if the service animal's presence would pose an undue burden on the LEA or require a fundamental alteration of the educational program. In determining if the service animal is necessary to provide the student equal access, the standard continues to be whether the animal's presence (1) constitutes an undue hardship to the school or fundamentally alters the nature of the service, program, or activity; and (2) meets any pre-established, non-discriminatory safety requirements.

Preliminary Response

In the Bakersfield City School District case, OCR (2008) noted that a district may offer "effective alternatives" to the use of a service animal, but those alternatives "must be effective in all of the functions the service animal performs with respect to the student's disability," e.g., a one-to-one aide. In this case, OCR ruled that, by failing to consider whether the dog was a necessary aid or service under the IDEA, the district deprived the student of his procedural safeguards. In essence, the LEA needs to go through the following steps:

1. A public entity may conduct an individualized inquiry to determine ask (1) whether the animal is required because of a disability; and (2) what work or task the animal has been trained to perform in determining whether an animal is a service animal.
 - a. For an animal to be considered a service animal, there must be evidence of individual training and the animal must be peculiarly suited to ameliorate the unique problems of the person with a disability.
 - b. Examine if prohibiting the service animal would limit or deny the student's opportunity to participate in or access the school program.
 - c. Consider whether the presence of the service animal will present an unreasonable risk to the health and safety of the student or others, present an undue financial burden, or otherwise require the LEA to fundamentally alter its program.
2. If it is determined that the dog is not a "service animal" (e.g., it is not trained to work for or perform tasks for the student),
 - a. The parent /guardian of the student must be informed of the LEA's Section 504 Policies and procedures and of their rights to appeal the LEA's decision to not permit the service animal.
 - b. The LEA must convene an IEP team meeting to determine whether the student requires the service animal to receive a FAPE.

IEP Team Considerations

For special needs students, a request for a service or accommodation should ultimately undergo a standard FAPE analysis, i.e. whether the student requires the use of a service animal to receive FAPE. Jacobs (2011) suggests that the following considerations can help the team's decision making process.

- Autism Service Animals
 - Impulse Running — dog is trained to retrieve child to adult.
 - PICA — dog is trained to interrupt the behavior.
 - Self-Stimulation — dog is trained to physically interrupt the behavior.
 - Self-Harming — dog is trained to interrupt the behavior.
 - Mood Swings — dog is trained to crawl onto child's lap and calm child.
 - Night Awakenings — dog is trained to alert parents by barking.

- Psychiatric Service Animals
 - “Grounding” the Individual with a Psychiatric Disability (involves “recognition” and “response”; e.g., sensing that the person is about to have a psychiatric episode and nudging, barking, or removing the person to a safe location until the episode subsides).
 - Calming a person who suffers from panic attacks.
 - NOTE: An “emotional support animal” or “therapy animal” is not a service animal. These are animals that have not been trained to perform a specific task that is directly related to an individual’s disability.
- Mobility-Impaired Service Animals
 - Provide stability for an individual with a disability.
 - Retrieve items for an individual with a disability.
 - Open doors for an individual with a disability.
 - Assist the person in standing and sitting.

Should an IEP team determine that a service animal is required to meet a particular student’s unique needs the conditions for the use of such a service animal should be referenced in the IEP document. Similarly, should a service animal be included in a student’s Section 504 Plan, the conditions for the use of such a service animal should be referenced in the Plan document. In both cases, that animal shall be considered a service animal for that student and the provisions of the adopted policy and administrative regulation related to service animals shall apply.

It may be important to go beyond an IDEA FAPE analysis in determining the need for a service animal. In 2011, the United States District Court Judge Andrew J. Guilford granted a preliminary injunction against the Cypress School District (“District”) that resulted in a six year old boy with autism bringing his companion dog to school provided his parents post a \$50,000 bond. The student’s parents obtained a “service” dog for their son (“C.C.”) through Autism Service Dogs of America and requested that C.C. be allowed to bring the dog to school. The District denied this request based upon the fact that C.C. did not require the dog (“Eddy”) for educational reasons since the student demonstrated continued progress on his IEP goals and educational benefit – a fact that C.C.’s parents did not dispute.

The Court determined that Eddy is a service animal under the Americans with Disabilities Act even though it was not needed per the IDEA FAPE standards. The Court ruled that even though the District showed the possibility that some program changes would be necessary to accommodate Eddy, those changes did not amount to a fundamental alteration rendering the presence of Eddy unreasonable. The Court found that disrupting the bond between C.C. and Eddy will cause irreparable harm as the 6.5 hours a-part everyday reduces Eddy’s service to C.C. and causes Eddy to be confused about his role as a service dog. In ordering that a \$50,000 bond must be posted by C.C. prior to the injunction becoming effective, the Court reasoned that because the ultimate impact due to Eddy’s presence on the other students in C.C.’s class and the potential costs due to such impacts is still unknown, the inherent costs with the risks of potentially reassigning and/or hiring staff and training staff warrants the bond.

Potential Reasons for Removal Request

The LEA may ask a student to remove his or her service animal from school premises if the animal is out of control and the student does not take effective action to control it. The principal or designee shall make a reasonable judgment that is based on available objective information regarding whether the dog presents an unacceptable risk or threat to others. In making this determination, the principal or designee may consider factors such as if the service animal

- ✓ Is clean, well-groomed and does not have an offensive odor;
- ✓ Is housebroken and does not urinate or defecate in appropriate locations;
- ✓ Does not solicit attention, visit or annoy any students or school personnel;
- ✓ Does not vocalize unnecessarily (i.e., barking, growling, or whining);
- ✓ Shows no aggressive behavior toward any individuals or other animals;
- ✓ Does not solicit or steal food or other items from the students or school personnel; and
- ✓ Does not interfere with or disrupt the educational program of any student.

In OCR's ruling on the Bakersfield City SD, it was determined that If a public entity properly excludes a service animal under Code of Federal Regulations,

1. 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.
2. Offer "effective alternatives" – alternatives to the service animal that are effective in all of the functions the service animal performs with respect to the student's disability.

Additional Considerations

The distinction between bringing an animal to school to share and a service animal is very important. For example, animals shall not be brought to school on school buses without express permission of the appropriate site administrator or designee, except that service animals needed by students with disabilities may accompany the student on the bus. Similarly, disabled teachers employed in a public or private school or community college and individuals who train such dogs may also be transported in a school bus with the individual. Any animal that meets one or more of the following definitions and is allowed to come to school or a school event shall be taken home at the end of the school day or event.

Animals in the Classroom

Teachers have been bringing animals into their classrooms for many years. This has been permissible under local board policy allowing a teacher or student to bring an animal into the classroom for instructional purposes with prior approval of the principal or designee. All animals brought to school must be in good physical condition and appropriately immunized. No one is allowed to bring poisonous or wild animals to school. Students bringing an animal to school, including service animals, must have the written consent of the parent/guardian and must first obtain the consent of the teacher and the appropriate site administrator. When the teacher brings an animal, he or she is responsible to ensure that the species of animal is appropriate for the instructional purpose and age and maturity of the students. Instructors should be familiar with the needs and behaviors of a given species prior to its introduction into the classroom. Students should be instructed on proper animal care and handling before having direct contact with the animals.

Animals brought to school by students or staff members are generally taken home the same day they are brought to school. With the consent of the appropriate site administrator or designee, animals may remain at school for the number of days needed to achieve the educational goal. The teacher shall provide a plan for the proper care, sanitation, feeding, and handling of the animal. Policy typically indicates that all animals must be humanely and properly housed in cages or containers specific for the species or otherwise appropriately controlled. The teacher is responsible to ensure that cages and containers are cleaned regularly and that waste materials are removed and disposed of in an appropriate manner. The teacher shall be responsible for the animal's care in the event of any school closure, and may allow students to take a class pet home when school is out of session, with the written consent of the parent / guardian. In addition, the teachers are responsible for ensuring that animals are strictly

controlled and for ensuring that all such precautions are observed so as to protect both the students and the animal. The LEA assumes no liability for the safety of animals voluntarily brought to school.

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in a classroom together, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

Other Animals on Campus

A “*public safety animal*” must also be considered. Animals under the control of public safety officials may have access to LEA classrooms for enforcement, educational and public relation purposes. Use of these animals is under the jurisdiction of the applicable local ordinance; or state and / or federal laws, codes and regulations. The provisions of policy directly related to the safety of students, staff, and visitors are to be brought to the attention of these officials by the site or program administrator.

In addition, animals brought to school by “*professional handlers*” for demonstration purposes must be under the control of the handlers at all times. All precautions should be taken to assure that the animals do not pose a threat to students, staff, or visitors. Parents should be notified and consent obtained for the students to participate in the planned LEA sponsored event. The parent notification should disclose the date, time, type of animal, and nature of interaction with student. The LEA can require that parent consent be obtained for students to participate in any LEA sponsored event which will involve live animals. The LEA can also require that the owner or organization, at its sole cost and expense, provide and keep in force during the live animal event, insurance coverage and that adequate proof of said insurance be provided to the LEA prior to the event taking place. Insurance limits required may vary depending on the type of contact and specie of animal(s), insect(s) and reptile(s).

Service Animals

In reviewing policy, procedures and practices, school personnel may wish to consider the following elements related to service animals in educational environments.

- ✓ A rest place and rest times for the service animal.
- ✓ Fire drill plan/participation and emergency evacuation plan;
- ✓ Pre-treating the school facility on a regular basis to reduce animal-borne allergens;
- ✓ An alternate accommodation plan in the event the service animal’s primary handler (if not the child) or the service animal is not able to accompany the student with a disability to school due to illness, injury or death;
- ✓ Training for any personnel who may handle the service animal, other than the primary handler;
- ✓ A school-wide educational program to educate others on how to behave appropriately around the service animal.

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