

TO: Division of Learning and Results
AEA Directors of Special Education
FR: Thomas A. Mayes
DA: September 19, 2013
RE: ADA regulations on service animals

I have prepared this Q-&-A document to assist Iowa's school districts, area education agencies, and accredited nonpublic schools in responding to the use of service animals by students and members of the public. This is in response to amended regulations, effective on March 15, 2011, issued by the United States Department of Justice (DOJ) under Titles II and III of the Americans with Disabilities Act. Title II governs school districts and AEAs. Title III governs accredited nonpublic schools.

1. What is the basic requirement of the revised ADA regulations?

Covered entities under Titles II and III "shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability."

2. What is a "service animal"?

According to the amended regulations, service animals are dogs that are

- individually trained to do work or perform tasks
- for persons with disabilities.

The DOJ gives the following non-exhaustive examples of services:

- "guiding people who are blind,"
- "alerting people who are deaf,"
- "pulling a wheelchair,"
- "alerting and protecting a person who is having a seizure,"
- "reminding a person with mental illness to take prescribed medications," or
- "calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack."

Other examples include preventing a person from engaging in self-injurious behavior, providing stability to a person with limited balance, retrieving objects for a person with limited mobility or dexterity, or preventing a person from leaving a designated area.

3. Who is an "individual with a disability" under the ADA?

The ADA covers persons who have "a physical or mental impairment that substantially limits one or more major life activities." The ADA also covers persons with a history or record of such an impairment, or persons who are perceived by others as having such an impairment.

It would appear that the ADA's service animal regulations do not cover requests by persons with a "record" of a disability or who are "perceived" as having a disability.

This is based on the ADA's requirement that the individual must need the animal's services. Persons who are covered under the ADA's "record of" or "regard as" prongs do not have an actual and present need for a service animal.

4. Are emotional support animals or therapy animals considered "service animals"?

No. According to the DOJ, "Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA."

5. A child's IEP team has determined that a child needs an emotional support animal in the classroom to receive a free appropriate public education (FAPE). May an IEP contain such a provision?

Yes. Even though support or comfort animals are not covered under the ADA's revised regulations (and thus not available as a matter of right), an individual's IEP team may, based on an individual's data, determine that a comfort or emotional support animal is required to provide a FAPE to an eligible individual.

6. My organization has a policy limiting pets in the classroom. May my organization apply that to service animals?

No. Service animals are not pets.

7. Where on my organization's campus are service animals allowed?

Under the ADA, school districts, area education agencies, and accredited nonpublic schools "must allow service animals to accompany people with disabilities in all areas ... where the public is normally allowed to go." This would include classrooms and school common areas.

8. When service animals are on my organization's campus, must they be under control?

Yes. Service animals are on your campus to provide a service to a covered individual and must be under control to do so. According to the DOJ, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

9. What questions may I ask a person who requests to use a service animal at my organization?

School districts, area education agencies, and accredited nonpublic schools may ask these two questions:

- "Do you need/require this animal because of a disability?"
- "What work or task has the dog been trained to perform?"

The revised ADA regulations provide the following limitation on the permissible inquiries a covered entity may make:

Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

10. May I ask for a doctor's note demonstrating that the person needs a service animal?

No.

11. May I ask for evidence that the animal has received a special certification or other documentation of training?

No.

12. May I ask the person to demonstrate the service the animal has been trained to perform?

No.

13. May my organization establish a policy that certain breeds of dog (such as pit bulls) are not considered service animals?

No. According to the DOJ, your organization may exclude animals that have been trained to attack.

14. A particular animal is out of control. May I ask that it be removed?

Yes. According to the DOJ, you may ask that the service animal be removed if the animal is not in control and "the handler does not take effective action to control it."

15. The animal is not housebroken. May I ask that it be removed?

Yes.

16. The animal had an "accident" today. This was the first accident the animal has had. May I have it removed?

No. Everyone has a bad day at work once in a while, including service animals. If this is a rare occasion, the dog is not removable. If it is frequent, then the dog is not housebroken and may be removed.

17. If my organization has the animal removed, does the individual with a disability have any rights?

Yes. Under the ADA, your organization must offer the individual the opportunity to obtain your organizations services (or goods) without the use of the service animal.

18. Must my staff provide the food or take the animal on walks to relieve itself?

No. Those items and activities are the responsibility of the handler. The handler must be permitted time to do those activities opportunities.

19. Can I put all children who need service animals in a separate class?

No. An individual may not be put in a separate class or building solely because the individual uses a service animal.

20. Must my preschool program allow service animals?

Yes, under either titles II (public preschool) or III (private preschool) of the ADA.

21. May I charge a fee or deposit before allowing a service animal on my campus?

No. If the service animal causes damage, however, you may assess a charge for damages.

22. My school food service refuses to permit children to bring service animals into the cafeteria or through the meal lines. They base their refusal on local health and food service codes. Are they correct?

No. The ADA's service animal rules preempt those local health codes.

23. My transportation department wants to know whether service animals are required to be allowed on school busses. Are they?

Yes.

24. Before I allow a child to bring a service animal onto my organization's campus, I would like to have an IEP team meeting or 504 team meeting to determine whether a service animal is necessary to provide the child with a FAPE. Is that permissible?

No. A child's rights under the ADA - including the right to use a service animal - are civil rights, and are not contingent on whether they provide a FAPE or other educational benefit to the child.

25. I am afraid that the child's use of a service animal would cause the child to not learn important skills. May I ask that the service animal be taken from the child during those skill-building activities?

It depends. This would require the agreement of the child and the child's family. Since the use of a service animal is a civil right - which may be exercised on demand - a school district, area education agency, or accredited nonpublic school may not require a child to forego using a service animal in the name of skill-building.

26. What about the rights of other children? What about children with dog allergies or phobias? May my organization exclude a service animal because another child in the class is allergic to dog dander?

It is a violation of the ADA to categorically exclude service animals based on phobia or allergy. When a school district, area education agency, or accredited nonpublic school

faces the situation where a child's allergies or phobias may be triggered by an individual with a disability's service animal, the organization must perform a nuanced analysis to ensure the rights of all are protected.

The starting point is whether the allergy or phobia is a disabling condition under the ADA. If it is not, then the service animal must remain. If it is, then the organization must accommodate both disabilities. It cannot automatically prefer either the person with the allergy or phobia or the person who uses a service animal.

According to the DOJ,

When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

If it is not possible to accommodate both children, then the agency must take action that is neutral and does not automatically give a preference or penalty to the service animal user. That may include reassigning one of the children to a different classroom, area of the building, or school. A potential solution would be to allow the child with the greater educational need to remain in the setting. If all things are equal and both children cannot remain in the setting, the organization may "break the tie" by any method that is disability neutral, such as by a random selection process (i.e., flipping a coin). Any placement change must follow the procedural safeguards required by Section 504 or the IDEA.

27. Are there other animals that qualify as service animals?

Yes. First, the ADA service animal regulations include some miniature horses as service animals. Second, Iowa law provides that additional species (including nonhuman primates) may be service animals. That state law must be followed, notwithstanding the ADA's limit of its coverage to dogs and miniature horses.

28. What are the revised regulations' requirements for miniature horses?

A miniature horse (as a general rule, a horse of 24 to 34 inches in height, measured at the shoulder, and 70 to 100 pounds) may be a service animal if it has been individually trained to perform work or tasks for people with disabilities. School districts, area education agencies, and accredited nonpublic schools must modify their policies, practices, or procedures to permit individuals with disabilities to use miniature horses where reasonable.

29. When is it reasonable to permit a miniature horse to be used?

It depends on four factors contained in the revised ADA regulations. Those four factors are:

1. whether the miniature horse is housebroken;
2. whether the miniature horse is under the owner's control;
3. whether the facility can accommodate the miniature horse's type, size, and weight; and
4. whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

Whether these factors allow a miniature horse to be present as a service animal will depend on the facts of each individual's case.

30. Iowa law allows more species than federal law. Are there other ways in which Iowa law is more expansive?

Yes. First, Iowa law specifically provides that persons training service animals may have access to all public services and places of public accommodation. That person may or may not be a person with a disability, but the trainer and the dog in training are covered under Iowa state law.

Second, Iowa law provides that a person assisting an individual with a disability by handling the service animal may be present in any public facility or place of public accommodation. The handler need not be an individual with a disability.

31. My organization has a kindergarten student with a disability whose mother is the child's service dog handler. We have a visitors' policy that limits parent access to classrooms. Must my organization permit the child's mother to be in the classroom?

Yes, under Iowa law. Your organization's policy must yield to the child's right under Iowa law.

32. My organization has a kindergarten student with a disability whose mother is the child's service dog handler. The child's mother interrupts the classroom teacher during the literacy block, corrects the classroom's paraeducator in the performance of his duties, and assists her child in answering assignments. Must my organization permit the child's mother to remain in the classroom?

Laws regarding service animals are premised on the animals being trained and not disruptive. If a dog disrupts a classroom (by barking during reading circle, by growling whenever approached, etc.), your organization may exclude the dog from the classroom. Likewise, a handler of a service animal must not disrupt a classroom. To the extent that a handler goes beyond the role in a disruptive way, the handler is like any other guest in the classroom and may be treated according to your organization's policy on guests in the classroom.

33. My organization has a kindergarten student with a disability whose mother is the child's service dog handler. The kindergarten teacher requires the mother to assist with classroom functions, such as assisting with literacy probes, monitoring recreational activities, and making copies. Is this permissible?

No. Your colleague must respect the handler's role in the classroom. The handler must be available to assist with the animal, and is not to be treated as the teacher's assistant.

34. May I exclude a service animal that is a direct threat to other students or fundamentally alters the services that my organization provides?

Yes. If a service animal provides a direct threat to others (e.g., biting others, see also the answer to the question about allergies) or fundamentally alters the educational environment (e.g., repeatedly barking during instruction), then the animal is not covered by the ADA. It is important to remember that the "direct threat" or "fundamental alteration" determination must be based on facts, not conjecture or prejudice.

35. A child's service animal handler is a person who would otherwise be excludable from our campus under our organization's visitor policy. Must we permit the handler onto our campus?

It depends. If the handler's presence would create an undue burden to your organization, would create a fundamental alteration of your organization's services, or would pose a direct threat to your organization's staff and clientele, the handler may be excluded. This is a very fact-specific inquiry. Your organization may wish to consult with counsel when making this determination.

36. Is my organization required to provide the handler?

No, in almost all cases. Your organization is required to provide the handler if and only if providing the handler is required for the child to receive a FAPE under the IDEA or Section 504. Providing the handler must be necessary to receive a FAPE, not merely beneficial, helpful, or advisable.

37. My organization has an employee who is requesting a service animal as a reasonable accommodation. Do the ADA's revised service animals apply to an employee's request?

No, but that does not mean your organization may ignore the employee's request. The revised ADA regulations apply only to Titles II and III, not to the ADA's protection for employees with disabilities, which are contained in the ADA's Title I. Title I is enforced by the Equal Employment Opportunity Commission (EEOC). Under Title I, the EEOC states that a service animal may be a reasonable accommodation for an employee with a disability. The EEOC has prepared several fact sheets on Title I, which are available at www.eeoc.gov/laws/types/disability.cfm.

38. What are the consequences for violating state and federal law regarding service animals?

Aside from what has already been covered, the potential remedies available to plaintiffs and the potential defenses available to employees are beyond the scope of this document. If you have questions of this nature, please consult with an attorney.

39. May my organization exclude a service animal from the classroom if the animal appears unhealthy, is poorly kept and smells bad, or has fleas or ticks that are now in the classroom carpet?

You may do so if the animal is excludable because it poses a direct threat to the health and safety of students and your colleagues, is an undue burden on your organization, or is a fundamental alteration of your organization's services. You may wish to consider whether this is a one-time occurrence or the animal's normal state. The animal's user is responsible for all damage caused by the animal, including damage caused by infestation of fleas or ticks.

40. May my organization require that the animal has received the appropriate vaccinations (rabies, distemper, etc.) to protect students and staff?

Yes, based on the few cases that have been decided after the 2011 regulations. This conclusion is reinforced by the DOJ's concerns about contagion and disease transmission in its comments to the 2011 regulations.

41. Where can I find additional information about service animals in the schools?

If you have questions about this document, please contact the Department at 515-242-5614. Additionally, the following web pages may be of assistance.

United States Department of Education's Office for Civil Rights:

www2.ed.gov/about/offices/list/ocr/index.html

United States Department of Justice's ADA page:

www.ada.gov

Iowa Civil Rights Commission:

icrc.iowa.gov

Iowa Department of Education:

www.educateiowa.gov

Disability Rights Iowa:

disabilityrightsowa.org

Iowa Legal Aid:

www.iowalegalaid.org

Iowa Association of School Boards:

www.ia-sb.org

School Administrators of Iowa:

www.sai-iowa.org

In addition, you may wish to consult with an attorney. If you do not have an attorney, the Iowa State Bar Association's Find-A-Lawyer service may be able to assist you: <http://www.iabar.net/AttorneyOnLine.nsf/srch?OpenForm>.