

SEE SPOT RUN – SERVICE ANIMALS IN SCHOOLS

Pursuant to Title III of the Americans with Disabilities Act and various state human rights laws, persons with disabilities may be entitled to bring a “service animal” into a place of public accommodation. A service animal generally is defined as any guide dog, signal dog, or ***other animal*** individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Although public schools may not be places of public accommodation under Title III, public schools are covered by Title II of the ADA as public entities. Title II makes no express reference to service animals but does provide, in pertinent part, that public entities “shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” The United States Department of Justice has interpreted this clause to mandate accommodation of service animals.

Public school districts are increasingly receiving requests by parents of students with disabilities to accommodate a student's service animal in the school setting. As noted in the ADA regulations, "[a] public entity (including public schools)...shall permit the use of a service animal by an individual with a disability, unless the public entity can demonstrate that the use of a service animal would fundamentally alter the public entity's service, program, or activity." Under these same regulations, the public entity can ask for the animal to be removed if: (1) the animal is out of control; (2) the animal poses a direct threat to the health or safety of others that cannot be eliminated by reasonable modifications; or (3) the animal constitutes a fundamental alteration.

Public schools throughout the country must be prepared to put in place appropriate and legally compliant policies and procedures that address what is anticipated to be a growing number of requests. Among the factors that will need to be addressed in such policies and procedures are the following: (1) will the animal cause a fundamental alteration of the classroom or school environment?; (2) will the animal pose a direct health or safety threat that cannot be otherwise accommodated?; (3) does the animal "do work or perform tasks" or is the animal's sole function therapeutic (socially or emotionally)?; and (4) is the student capable of caring for the dog appropriately while at school?

Policies and procedures also need to address the manner in which a determination about the use of service animals will be made. Although some of the existing law suggests that the decision is an administrative one based on the previously mentioned factors, other courts and the Office for Civil Rights have stated that whether a service animal may come to school is an IEP or Section 504 team decision. If the decision is a team one, the critical question becomes whether the service animal is necessary to provide FAPE or equal opportunity to participate in/benefit from the educational program.

This presentation will speak to the current statutes, regulations and case law that address the use of service animals in public entities and public schools. In addition, the presentation will include a sample policy or policies that govern the use of service animals and will provide the audience with a check list of factors to be used to analyze a particular request for a service animal. Finally, the presentation will utilize an entertaining animation video format to illustrate the issues and difficulties that may arise when a school is confronted with a request for a service animal.