

# Service Animals Factsheet Q & A

**KTJ**

KLEIN, THORPE & JENKINS, LTD.  
Attorneys at Law



**Mallory A. Milluzzi**, Attorney  
Klein, Thorpe and Jenkins, Ltd.  
20 N. Wacker Drive,  
Suite 1660  
Chicago, Illinois 60606  
(312) 984-6400  
email: [mmilluzzi@ktjlaw.com](mailto:mmilluzzi@ktjlaw.com)

Orland Park Office  
15010 S. Ravinia Avenue,  
Suite 17  
Orland Park, Illinois 60462  
(708) 349-3888  
Firm website: [www.ktjlaw.com](http://www.ktjlaw.com)

This document is intended as a practical guide for school boards and administrators. It is for informational purposes only and not for the purposes of providing legal advice. This document is prepared based upon recent state and federal laws and available materials from the U.S. Department of Education and Illinois State Board of Education. There may be more recent or comprehensive materials available which are not included or referenced herein.

# Service Animals Factsheet Q & A

## Service Animals Generally

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### 1. What is a service animal?

In Illinois, a service animal is defined as a dog or a miniature horse that has been individually trained or is being trained to do work or perform tasks for the benefit of an individual with a disability.<sup>1</sup> While the formal definition of service animals in regulations implementing Title II<sup>2</sup> of the federal Americans with Disabilities Act (ADA) is limited to dogs<sup>3</sup>, the regulations also recognize the use of miniature horses as service animals.<sup>4</sup>

### 2. Can service animals be any breed of dog?

Yes. The ADA does not restrict the type of dog breeds that can be service animals.

### 3. Are service animals required to wear something that identifies it as a service animal?

No, the law does not require that the service animal wear a harness, backpack, or vest identifying it as a service animal.

### 4. Do service animals have to be professionally trained?

No. People with disabilities have the right to train the service animal themselves and are not required to use a professional training program.

### 5. Does the ADA require that service animals be certified as service animals?

No. Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry.

### 6. Do service animals have to be licensed?

Service animals are subject to the licensing rules that are applied to all dogs in that municipality.

### 7. Do service animals have to be vaccinated?

Service animals are subject to the vaccination rules that are applied to all other such species of animal (be it a dog or miniature horse) in that state and municipality. Districts cannot require an individual to pay for or acquire additional vaccinations, treatments or examinations that are not required under state and local laws.

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<sup>1</sup> 105 ILCS 5/14-6.02; 720 ILCS 5/48-8.

<sup>2</sup> Title II of the ADA applies to all services, programs, and activities provided to the public by State and local governments, except public transportation services. 28 C.F.R. §35.102.

<sup>3</sup> 28 C.F.R. §35.104.

<sup>4</sup> 28 C.F.R. §35.136(i).

## **8. May a public entity place any limitations on the use of a miniature horse?**

Public entities must make reasonable accommodations, but they may take into consideration the following when deciding whether modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility: 1) the type, size, and weight of the miniature horse and whether the facility can accommodate its 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 the facility compromises legitimate safety requirements necessary for operation.

## **9. If a municipality has an ordinance that bans certain dog breeds, does the ban apply to service animals?**

No. Municipalities that prohibit specific breeds of dogs must make an exception for a service animal of a prohibited breed, unless the dog poses a direct threat to the health or safety of others. Under the "direct threat" provisions of the ADA, local jurisdictions need to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal's actual behavior or history, but they may not exclude a service animal because of fears or generalizations about how an animal or breed might behave. It is important to note that breed restrictions differ significantly from jurisdiction to jurisdiction. In fact, some jurisdictions have no breed restrictions.

## **10. Who may use service animals?**

Any person with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability may use a service animal, if that service animal performs a task or does work related to that individual's disability.

## **11. What are examples of the work or tasks service animals perform for a person with a disability?**

Examples of work or tasks service animals can do include, but are not limited to, assisting individuals who are blind or have low vision with navigation, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

## **12. Is a comfort/emotional support dog considered a service animal?**

Emotional support animals do not qualify as service animals as defined in the ADA's Title II regulations. However, the U.S. Department of Justice (DOJ) has stated that emotional support animals may be permitted reasonable accommodations under other laws.<sup>5</sup> This suggests that an emotional support animal might qualify as a reasonable accommodation if necessary for a public school student's receipt of a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 (section 504) and/or the Individuals with Disabilities Education Improvement Act (IDEA). The DOJ makes the distinction between a "psychiatric" service animal and an emotional support animal based on the work or tasks the animal performs. Performing comfort or companionship is not the same as performing such tasks as reminding an individual with a disability to take medication, performing safety checks or room searches for individuals with Post Traumatic Stress Disorder, interrupting self-mutilation, and removing disoriented individuals from dangerous situations.<sup>6</sup>

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<sup>5</sup> 75 Fed. Reg. 56166 (2010).

<sup>6</sup> *Id.* at 56195.

### **13. Can a public entity require payments to use a service animal?**

No, a public entity may not require an individual with a disability to pay a surcharge, even if it requires individuals with pets to pay a fee. This prohibition on additional expenses applies to requiring parents to insure the service animal.<sup>7</sup> However, a public entity may charge an individual with a disability for any damage caused by a service animal.<sup>8</sup>

## **Service Animals in Schools**

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### **1. Where and when are service animals allowed to be in schools?**

Under the ADA, service animals are to assist individuals in equally accessing the public school. As such, service animals shall be permitted to accompany that student at all school activities, whether in or outside the classroom. Additionally, parents or teachers may bring service animals to school or school events if it is necessary to help them access the public facility as well.

### **2. Are service animals allowed on school buses?**

Yes, students with disabilities have the right to bring their service animals on the bus with them.

### **3. Are service animals allowed on field trips?**

Yes, students with disabilities have the right to bring their service animals on field trips and to school extra-curricular activities.

### **4. Are districts responsible for the care and supervision of service animals?**

No, districts do not have to provide care and supervision of service animals, such as providing a tether or a trained handler.<sup>9</sup> In some cases, however, the district may need to assist a student with the care of his or her service animal in order to satisfy the ADA's reasonable accommodations requirement.<sup>10</sup>

### **5. May a school prohibit the use of a service animal?**

No, districts may not prohibit the use of service animals on school grounds. They are required to modify their policies, practices, and procedures to permit the use of service animals by individuals with disabilities.<sup>11</sup> Districts also may not lead parents, students, or the community to believe that service animals are not welcome at schools. However, the ADA does not require the modification of policies, practices or procedures if it would fundamentally alter the nature of the goods, services, programs or activities provided. Nor does the ADA overrule safety considerations.

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<sup>7</sup> *Alboniga v. School Board of Broward County, Fla.*, 87 F. Supp. 3d 1319 (S.D. Fla. 2015).

<sup>8</sup> 28 CFR 35.136(h).

<sup>9</sup> 28 CFR 35.136(e).

<sup>10</sup> *Alboniga v. School Board of Broward County, Fla.*, 87 F. Supp. 3d 1319 (S.D. Fla. 2015).

<sup>11</sup> 28 CFR 35.136(a).

**6. When might a service dog’s presence fundamentally alter the nature of a service or program provided to the public?**

In most settings, the presence of a service animal will not result in a fundamental alteration. However, there are some exceptions. For example, at a boarding school, service animals could be restricted from a specific area of a dormitory reserved specifically for students with allergies to dog dander. At a zoo, service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. They cannot be restricted from other areas of the zoo.

**7. What does “under control” mean?**

The ADA requires that service animals be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. In the school (K-12) context and in similar settings, the school or similar entity may need to provide some assistance to enable a particular student to handle his or her service animal. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal’s work or the person’s disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal. For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item at a distance from her. Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control.

**8. What questions can a school ask about a service animal?**

Schools may ask only the following questions: whether the animal is required because of a disability and what task(s) the service animal been trained to perform. 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.

**9. What documentation can schools require individuals with service animals to provide?**

Covered entities such as schools may not require documentation such as proof that the animal has been certified, trained, or licensed as a service animal as a condition for entry. Covered entities may ask for proof of vaccination if vaccination is required within the municipality.

**10. Are there any scenarios in which a school or public entity may ask an individual with a disability to remove a service animal from the premises?**

Yes, if: 1) if the animal is out of control and the handler does not take effective action to control it; or 2) the animal is not housebroken.<sup>12</sup> For example, a dog is out of control if it bites a classmate or has a history of aggressive behavior, so the school may remove the dog from school grounds without violating Title II of the ADA because it was out of control.<sup>13</sup> When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal’s presence.

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<sup>12</sup> 28 CFR 35.136(b).

<sup>13</sup> *AP v. Pennsbury Sch. Dist.*, 68 IDELR 132 (E.D. Pa. 2016).

**11. Are there any scenarios in which a school or public entity may exclude a service animal?**

The ADA does not require covered entities to modify policies, practices, or procedures if it would “fundamentally alter” the nature of the goods, services, programs, or activities provided to the public. Nor does it overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. In addition, if a particular service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, that animal may be excluded.

**12. Is there a connection between service animals and FAPE considerations?**

Yes. The IDEA or Section 504 may require school districts to allow a student to bring a service animal to school as part of FAPE. It is important to note that a student may need a service animal for FAPE but not for ADA but likewise, a student can have a service animal and not need FAPE. Districts should be wary of excluding service animals outright without considering the specifics of the student’s situation and his or her individualized needs.<sup>14</sup> The U.S. Supreme Court has held that students whose service animals have been excluded from school may file disability discrimination claims under Title II of the ADA even if they have received FAPE under the IDEA.<sup>15</sup>

**13. Can a school deny a service animal because the student doesn’t need the service animal to receive FAPE or to learn?**

No. Under the ADA, the student is still allowed to have the service animal even if the student doesn’t need the service animal to receive FAPE or to learn.

**14. Can schools deny service animals because a teacher or student is allergic to dogs?**

No. 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 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.

**15. What can a school do when a service animal is being disruptive?**

If a service animal is out of control and the handler does not take effective action to control it, staff may request that the animal be removed from the premises.

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<sup>14</sup> *In re: Student with a Disability*, 65 IDELR 57 (SEA IL 2014) (finding that a district denied a second-grader FAPE when it banned her service dog without first convening her IEP team to review and revise her IEP). See also *Putnam County (WV) Schs.*, 65 IDELR 184 (OCR 2014) and *Colorado Springs (CO) Sch. Dist. #11*, 56 IDELR 52 (OCR 2010).

<sup>15</sup> *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743 (U.S. 2017).

**16. Can schools permit the use of service animals for its students only?**

No, the obligation to make reasonable modifications to district policies, practices, and procedures applies to parents and other individuals with service animals as well as students.<sup>16</sup> Districts must afford parents with disabilities the same opportunities to participate in district programs and activities that nondisabled parents have. This means that districts cannot require parents with service animals to meet additional participation requirements.<sup>17</sup>

**17. Does a school district have to permit a service animal that is in training to come to school facilities?**

Yes. While under federal law, a service animal has to be already trained to be considered a service animal, Illinois law covers dogs that are in training to be a service animal.<sup>18</sup>

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<sup>16</sup> *Grand Rapids (MI) Pub. Schs.*, 115 LRP 10965 (OCR 10/21/14).

<sup>17</sup> *Hillsboro (OR) Sch. Dist. 1J*, 59 IDELR 82 (OCR 2012).

<sup>18</sup> 775 ILCS 30/3; 720 ILCS 5/48-8.