

WHAT IS A SERVICE ANIMAL?

Service animals assist people with a variety of disabilities including sight, hearing and mobility impairments; autism; seizures; and post-traumatic stress disorders. Different words are used to describe a service animal – comfort, therapeutic or assistant – however, only certain trained animals are service animals under federal and Oregon law.

The definition of a service animal from the Americans with Disabilities Act (ADA) applies to public schools and institutions.¹

Under the ADA, a “service animal” is a dog that has been trained to do work or perform tasks for an individual with a disability and the tasks performed by the dog must be directly related to the person’s disability.²

Currently, miniature horses are the only other species of animal considered a service animal under the ADA. If you encounter a miniature horse service animal, please contact PACE Legal Services or your general counsel for further information.

The tasks a service animal performs can vary depending on the circumstances. For example, the tasks will likely be different if the animal is on an airplane, in an apartment building or in a school.

HOW DO I IDENTIFY A SERVICE ANIMAL?

If the dog is obviously a service animal, a school may not ask any questions and must accommodate the service animal. For example, if an individual is clearly blind and the dog is guiding the blind individual, the school should not ask any questions and should permit the animal. If the animal is not obviously a service animal, the school may ask two questions:³

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?



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WHAT TASKS DO SERVICE ANIMALS PERFORM?

A service animal must be trained to perform tasks directly related to a disability and to assist the person with a disability.⁴ Tasks performed by the service animal can be anything related to helping the disabled individual, including a physical or a non-physical task.⁵ Possible service animal tasks can include, but are not limited to:

ALERTING a person with diabetes when his/her blood sugar is high or low;

DETECTING the onset of a seizure and helping the person stay safe during the seizure;

GUIDING the handler to a safer place;

PROVIDING deep pressure therapy;

REMINDING the handler to take medication;

LEADING the handler to locations on cue;

BRACING or counter-balancing the handler;

WAKING up the handler;

ALERTING the handler to emergencies;
or

PROVIDING mobility support.



To work or perform a task, the service animal must be able and trained to recognize and respond to the disabled individual and disability.⁶

DO SERVICE ANIMALS HAVE TO PERFORM PHYSICAL TASKS?

No. A service animal does not need to exclusively perform a physical task. A service animal can also be trained to perform non-physical tasks. For example, a service animal who has been trained to “ground” an individual with a dissociative disorder, by being present and by the individual’s side, is performing a non-physical task and is a service animal.⁷

There is a fine line between a service animal performing non-physical tasks and emotional support animals. If a service animal is trained to recognize and respond to a disability in a non-physical way, then the task is actively affecting a person with a disability and the animal is therefore considered a service animal.⁸ However, if an animal’s only purpose is to be present and the animal is untrained, then it only passively helps a person with a disability and it is not a service animal.⁹

DO I HAVE TO PERMIT A COMFORT OR EMOTIONAL SUPPORT ANIMAL?

No. Comfort and emotional support animals are not service animals and are not given the same public accommodation. If a dog is trained for the sole purpose of providing a crime-deterrent effect, emotional support, well-being, comfort or companionship, then the animal is not a service animal.¹⁰

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DO I HAVE TO PERMIT A PSYCHIATRIC SERVICE ANIMAL?

Yes. A psychiatric service animal will receive public accommodation under the ADA.¹¹ The distinguishing factor between an emotional support animal and a psychiatric service animal depends on the animal's purpose and training. If the service animal is trained to recognize its handler's disability and perform a task to mitigate the effects, then the animal is a service animal.

CAN THE SCHOOL ASK AN INDIVIDUAL ABOUT THE NATURE AND EXTENT OF HIS/HER DISABILITY?

No. Federal and Oregon law prohibit a public entity from asking an individual about the nature or extent of a disability.¹²

IS THE SCHOOL RESPONSIBLE FOR THE CARE OR SUPERVISION OF THE SERVICE ANIMAL?

Maybe. Under the ADA, the handler of the animal, whether a student or third person, is responsible for caring and supervising the service animal.¹³ This includes toileting, feeding, grooming and proper veterinary care.

However, if assisting or monitoring the service animal during school is a reasonable accommodation under the circumstances, then the school may assist or monitor the service animal.¹⁴ For example, in a Florida school, a court held that hiring a staff member to assist a student lead his service animal outside to relieve itself was a reasonable accommodation.¹⁵ However, a school is not responsible for the "general upkeep and routine animal maintenance," like feeding, cleaning, training, grooming and veterinary care.¹⁶

IS SPECIAL TRAINING REQUIRED TO BE A SERVICE ANIMAL?

No. Service animals do not need to be trained by a professional trainer; they only need to be trained. The ADA has declined to define what type or amount of training an animal must undergo to qualify as a service animal.¹⁷

CAN A SCHOOL ASK FOR OR REQUIRE PROOF OF VACCINATIONS?

No. Under the ADA, a public entity may not require documentation and is only permitted to ask whether the dog is a service animal required because of a disability and what work or task the dog has been trained to perform. Therefore, schools may not ask about, nor require documentation of, vaccinations, liability insurance, licensing or registration.¹⁸



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DO SERVICE ANIMALS HAVE TO WEAR A VEST OF SOME KIND?

No. The ADA and Oregon law do not require service animals to wear vests, ID tags or specific harnesses.¹⁹ Public entities cannot require documentation, registration or licensing of a service animal.²⁰ Requiring a vest and/or tags is likely considered a type of documentation.²¹

WHAT IF SOMEONE IS ALLERGIC TO OR AFRAID OF DOGS?

Allergies to animal dander and fear of dogs are not valid reasons for denying a service animal access or accommodation.²² If a person who is allergic to or afraid of dogs must spend time in the same facility or room, then both the person and service animal should be accommodated and if possible assigned to different rooms or different locations in the room.²³

WHAT LAWS GOVERN PUBLIC SCHOOLS AND SERVICE ANIMALS?

- Title II of the Americans with Disabilities Act
- Section 504 of the Rehabilitation Act of 1973
- The Individuals with Disabilities in Education Act
- ORS 659A.143
- Local laws



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DO I HAVE TO PERMIT SERVICE ANIMALS IN TRAINING?

Yes. In Oregon, dogs in training and dogs that are accompanied by a service animal trainer are given public accommodation if they are being trained to be a service animal.²⁴ However, a trainer “must be exercising care, custody, and control over the assistant animal trainee” to be given accommodation. In this way, Oregon law is more expansive than federal law.²⁵ Under the ADA, service dogs must already be trained to get public accommodation.²⁶

WHEN CAN A SERVICE ANIMAL BE EXCLUDED?

A person with a disability cannot be asked to remove a service animal from the premises unless: (1) the presence of the dog would result in a fundamental alteration of any school program; (2) the dog is out of control and the handler does not take effective action to control it; or (3) the dog is not housebroken.²⁷

CAN YOU EXCLUDE A SERVICE ANIMAL FOR HAVING A BATHROOM ACCIDENT?

Maybe. If the dog is not housebroken, then you can exclude the service animal.²⁸

CAN YOU EXCLUDE A SERVICE ANIMAL IF IT GROWLS AT SOMEONE?

Maybe. If the dog is not under the control of the handler or the handler does not take effective actions to control the dog, then you can exclude the service animal.²⁹ However, an isolated or provoked bark or growl is not enough to show the handler was not in control.³⁰

The information provided in this document should not be construed as legal advice.
For legal advice regarding your situation, contact PACE Legal Services,
an OSBA attorney, or other counsel.

For assistance reducing potential liabilities in your school, contact a
PACE Legal Services attorney at pacelegal@osba.org.

PACE Legal Services
1-800-578-6722
pacelegal@osba.org
pace.osba.org

Policy Assistance

OSBA has developed sample policies regarding animals in schools and
the use of service animals in classroom situations. For more information, contact:

OSBA Policy Department
503-588-2800

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REFERENCES:

1. U.S. DEPARTMENT OF JUSTICE, ADA REQUIREMENTS: ADA ENFORCEMENT (2010), https://www.ada.gov/service_animals_2010.htm (6/12/18).
2. U.S. DEPARTMENT OF JUSTICE, FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA Q1 (2011), https://www.ada.gov/regs2010/service_animal_qa.html (3/27/18). See also [cite to Oregon law's definition]]. Oregon law calls service animals another name, "assistance animals." Under Oregon law, an assistance animal "means a dog or other animal designated by administrative rule that has been individually trained to do work or perform tasks for the benefit of an individual. ORS 659A.143.
3. Id. * at Q7.
4. Id. * at Q2. See also, *Rose v. Springfield-Greene County Health Dept.*, 668 F.Supp.2d 1206, 1210 (W.D. MI 2009).
5. U.S. DEPARTMENT OF JUSTICE, NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES 73 FR 34466-01, 34473 (2008), https://www.ada.gov/regs2010/service_animal_qa.html (3/27/18).
6. Id.
7. Id. at 34478.
8. Id.
9. Id. at 34503.
10. U.S. DEPARTMENT OF JUSTICE, FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA Q3 (2011), https://www.ada.gov/regs2010/service_animal_qa.html (3/27/18).
11. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES, at 34473.
12. OAR 839-006-0345(4); ORS 659A.143(2).
13. 28 CFR § 36.302(c)(5).
14. *Alboniga v. School Bd. of Broward Cnty. Fla.*, 87 F.Supp.3d 1319, 1344 (2015).
15. Id.
16. Id.; see also, *Riley v. School Administrative Unit #23*, WL 9806795 at *10 (2015).
17. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES, at 34473.
18. 28 CFR § 35.136(f).
19. U.S. DEPARTMENT OF JUSTICE, FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA Q8 (2011), https://www.ada.gov/regs2010/service_animal_qa.html (3/27/18).
20. 28 CFR § 36.302(c)(6).
21. *De Leon v. Bornado Montehiedra Acquisition L.P.*, 166 F.Supp.3d 171, 176 (2016).
22. U.S. DEPARTMENT OF JUSTICE, FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA Q6 (2011), https://www.ada.gov/regs2010/service_animal_qa.html (3/27/18). See also *Sullivan By and Through Sullivan v. Vallejo City Unified school Dist.*, 731 F.Supp. 947, 960 (1990)("By placing plaintiff in classroom taught by a person known to have severe allergies to animal dander, the [School District] has failed in their obligation to ensure the [student] will have meaningful access to their educational program.").
23. Id.
24. ORS 659A.143; OAR 839-006-0345.
25. OAR 839-006-0345(3).
26. U.S. DEPARTMENT OF JUSTICE, FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA Q6 (2011), https://www.ada.gov/regs2010/service_animal_qa.html (3/27/18).
27. Id.
28. Id.
29. Id.
30. Id. at Q27.