

Informational Legal Memo



TO: Indiana Public Libraries

FROM: Bei-Er Cheok (Legal Extern, Maurer School of Law)

RE: ADA & Service Animals

DATE: May 20, 2016

On September 15, 2010, the Department of Justice (DOJ) published the revised final regulations for both Title II (public entities, i.e. State and local government services) and Title III (public accommodations) of the Americans with Disabilities Act (ADA).

With the new 2010 ADA rules, the DOJ has strictly limited the definition of service animal to “dogs that are 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.” 28 C.F.R. § 35.104 (2016). The DOJ additionally insists that the tasks performed by the service animal *must* be directly related to the individual’s disability, which includes assisting blind or vision-impaired individuals with navigation, notifying deaf or hard of hearing of people around them, or assisting in pulling a wheelchair. *Id.* The DOJ has specifically stated that “[t]he provision of emotional support, well-being, comfort, or companionship do[es] not constitute work or tasks for the purposes of this definition.” *Id.*

To preserve individual privacy, however, the DOJ has also placed strict limitations on any ADA-covered entity’s staff when determining whether the animal is a service animal or not. Under the new policies, there are only two questions that staff may be allowed to ask when it is not

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obvious what service the animal provides: (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. 28 C.F.R. § 35.136(f) (2016). If it is “readily apparent” that the animal is trained to perform tasks for people with disabilities (*e.g.*, dog is clearly guiding a blind or low vision individual), generally the public entity’s staff may not make these inquiries. Furthermore, the DOJ has stated that a person with a disability cannot be asked to remove their service dog from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it, or (2) the dog is not housebroken. 28 C.F.R. § 35.136(b) (2016). If there is a legitimate reason to have the service animal removed from the premises, the staff must then offer the person with the disability the opportunity to obtain goods and services without the animal’s presence.

Although the DOJ has not explicitly recognized miniature horses as service animals, they have set aside an exception for them. This separate provision imposes standards similar to those of service dogs, requiring that the miniature horses be individually trained to do work or perform tasks for people with disabilities. Any facility covered under the ADA must modify their premises to accommodate miniature horses where reasonable. Additionally, there are four assessment factors for the facility to consider before accommodating a miniature horse: (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. 28 C.F.R. § 35.136(i). The rest of the ADA’s rules regarding service dogs (staff inquiries, handler control, etc.) continue to apply here.

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While Indiana State law follows the ADA definitions for persons with disabilities, and similarly imposes penalties on facilities and individuals who discriminate based on disability, it has expanded on the specifics of what constitutes a “service animal.” Ind. Code Ann. § 16-32-31-1.5 defines a “service animal” as an animal trained as: (1) a hearing animal; (2) a guide animal; (3) an assistance animal; (4) a seizure alert animal; (5) a mobility animal; (6) a psychiatric service animal; or (7) an autism service animal. Issues tend to arise when patrons bring in “therapy dogs” into public accommodations or public entities, insisting that they are service animals as per ADA policies. It is difficult to determine if a “therapy dog” falls under psychiatric service animal (ADA-approved) or an emotional support animal (non-approved) since the term “therapy” has broad connotations. However, the DOJ has attempted to clarify the differences between a psychiatric service and an emotional support animal, defining psychiatric animals as ones that “help persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.” 28 C.F.R. § 35.104 (2016). This includes tasks such as reminding the handler to take their medicine, providing safety checks or room checks for those with PTSD, interrupting self-mutilation attempts, and keeping disoriented individuals from danger. Coupled with the DOJ explicitly stating that “[a]nimals whose sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or promote emotional well-being are not service animals,” this distinction becomes relatively clearer. Thus, if it is not “readily apparent” that the dog is a service animal, a staff member could legally ask the handler the task the dog has been trained to perform, and through the answer determine whether it is a psychiatric service animal or an emotional support animal. It is crucial to note, however, that the staff is NOT allowed to inquire about the person’s disability, require medical documentation, require a special card or training

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documentation for the dog, or ask that the dog demonstrate its ability to perform its task. 28 C.F.R.

§ 35.136(f) (2016).

As a final note, many individuals today are registering their dogs through various online dog registries, ranging from “The United States Service Dog Registry” to “National Service Animal Registry” to “Service Dog Registration of America.” Not one of these services is officially recognized by the DOJ or any other governmental organization. Under the ADA’s rules, service animals DO NOT need to be certified as service animals, since the Title II and III entities cannot require documentation or proof from the handler of the animal being certified or trained. The DOJ has sought to distance itself from these organizations, stating that “[t]hese documents do not convey *any* rights under the ADA and the Department of Justice does *not* recognize them as proof that the dog is a service animal.” U.S. Dept. of Justice, *Frequently Asked Questions about Service Animals and the ADA* (2015) (emphasis added). Therefore, even if a patron insists on providing such documentation, staff is may still ask the two DOJ-approved questions regarding the work or task the dog is trained to perform and whether the dog is a service animal required because of a disability.

For further information on the new ADA policies regarding service animals, please visit the following links:

U.S. Dept. of Justice, *ADA 2010 Revised Requirements: Service Animals* (July 2011), http://www.ada.gov/service_animals_2010.htm (Reader-friendly version of ADA service animal requirements).

U.S. Dept. of Justice, *Frequently Asked Questions about Service Animals and the ADA* (2015), http://www.ada.gov/regs2010/service_animal_qa.pdf (In-depth FAQ on service animals and the ADA policies).

U.S. Dept. of Justice, *Americans with Disabilities Act Title II Regulations: Nondiscrimination on the Basis of Disability in State and Local Government Services* (Sept. 5, 2010), http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf (Full text of the updated Title II Regulations).