

SERVICE ANIMALS & SERVICE, SIGNAL DOGS, AND GUIDE DOGS POLICY (SP 0411)

Pursuant to 28 CFR Section 35.136, as amended by 75 Fed.Reg. 178, a public entity is mandated to modify its policies, practices, and procedures to permit an individual with a disability to use at school a service animal, as defined below, when the work or task performed by the service animal is directly related to the individual's disability.

For an individual with a disability, service animal means any dog that is individually trained to do work or perform tasks related to the individual's disability and for his/her benefit. For example, for an individual who is blind or has low vision, a service animal would mean a dog that helps him/her with vision, navigation, and other tasks; for an individual who is deaf or hard of hearing, a service animal would mean a dog that alerts him/her to the presence of people or sounds; and for an individual with psychiatric or neurological disabilities, a service animal would mean a dog that assists him/her by preventing or interrupting impulsive or destructive behaviors. (28 CFR Section 35.104)

Regulations permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the individual's benefit. (28 CFR Section 35.136(i)(1)) In determining whether modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, the public entity must consider:

1. The type, size, and weight of the miniature horse and whether the facility can accommodate these 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 a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(28 CFR Section 35.136(i)(2))

Individuals with disabilities may be accompanied on school premises by service animals, including specially trained guide dogs, signal dogs, or service dogs. (Civil Code Section 54.2) Civil Code section 54.1 defines a "guide dog" as a dog trained by an appropriately licensed person to assist an individual with a disability; a "signal dog" as any dog trained to alert an individual, who is deaf or hearing impaired, to intruders or sounds; and a "service dog" as any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items. Guide dogs, signal dogs, and service dogs shall be referred to as "service animals" in this Policy.

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Service animals may be transported in a school bus when accompanied by students with disabilities enrolled in a public or private school, by disabled teachers employed in a public or private school or community college, and by individuals who train such dogs.(Education Code Section 39839)

If the sole function of the dog is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or to promote emotional well being, it shall not be considered to be a guide dog, signal dog, or service dog. (28 CFR Section 35.104)

A public entity may not ask about the nature or extent of the individual's disability, but it may ask whether the service animal is required because of a disability and ask about the work or task the animal has been trained to perform. As a general rule, however, a public entity may not ask these questions when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (for example, when a dog is seen guiding a person with a visual impairment or pulling an individual's wheelchair). (28 CFR Section 35.136(f)) A public entity may not require documentation from an individual with a disability, such as proof that the animal has been certified, trained, or licensed as a service animal. (28 CFR Section 35.136(f))

Before an individual may bring a service animal into a classroom, the principal or designee shall first provide written notification to all parents/guardians of students in the particular class, requesting information regarding whether their child has any known allergies, asthma, or other health-related conditions that may be affected by the dog's presence in the classroom. If the principal or designee determines that a student in the particular class has a health-related condition that would be affected by the presence of the service animal, the principal or designee should determine how to make reasonable modifications to accommodate the other students, including changing the placement of the student with the service animal.

Any service animal brought to school by an individual with a disability shall be taken home the same day.

The school assumes no liability and shall not be responsible for the provision of a service animal. The user of the service animal is responsible for its care and conduct at all times, including provision of a tether or trained handler. (28 CFR 35.136(e)) A school might need to assist a student with the care of his animal in order to satisfy the Americans with Disabilities Act reasonable accommodations requirement.

The principal or designee may ask any individual with a disability to remove his/her service animal from school premises or transportation if the animal is out of control and the individual does not take effective action to control it or the animal is not housebroken. When an individual's service animal is excluded, he/she shall be given an opportunity to participate in the service, program, or activity without having the service animal present. (Education Code Section 39839; Civil Code Section 54.2; 28 CFR Section 35.136)

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LEGAL REFERENCES:

CALIFORNIA CONSTITUTION

Article I, Section 28(f)(1) Right to Safe Schools

CIVIL CODE

54.1 Access to public places

54.2 Guide, signal or service dogs, right to accompany

GOVERNMENT CODE

Section 12926

EDUCATION CODE

Section 35160 Authority of Governing Boards

Section 39839 Transportation of guide dogs, signal dogs, service dogs

Section 56363(b)(3) Designated Instruction and Services

FEDERAL LAW

Titles II and III of the Americans with Disabilities Act of 1990

(Public Law 101-336)

ADA Amendments Act of 2008

FEDERAL REGULATIONS

28 CFR Section 35.136 Service Animals

34 C.F.R. Section 300.34(b)(7) Orientation and Mobility

COURT DECISIONS

Sullivan v. Vallejo City USD, 731 F.Supp. 947 (E.D.Cal. 1990)

Alboniga v. School Board of Broward County, Florida, 87 F.Supp.3d 1319 (S.D.Fla. 2015)

OFFICE OF CIVIL RIGHTS OPINIONS

Bakersfield City School District (OCR 2008) 50 IDELR 169.