



## CAMPUS COUNSEL

A Legal Blog Written for Administrators, HR professionals, in-house counsel, and deans at colleges and universities

### Accommodating Service Animals on Campus

BY JACOB A. TOSTI • JULY 29, 2019

In recent years, institutions have experienced a significant increase in the amount of emotional support animal accommodation requests from students living in on-campus housing. However, an institution's obligation to reasonably accommodate animals on campus is not limited to emotional support animals in dwellings: Institutions must also accommodate the use of "service animals" in generally all areas and facilities on campus open to students or the public. Service animals are significantly different from emotional support animals and have distinct functions and permitted uses. Some fundamental principles concerning postsecondary students and service animals are set out below.

#### Definition of Service Animals

A service animal is a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. The work or tasks must be directly related to the disability; for example, a dog trained to sense that a student with post-traumatic stress disorder is about to have an anxiety attack and take specific actions that help avoid or lessen the attack is a service animal. Conversely, a dog whose sole function is to provide general comfort or emotional support to a student with a disability is not a service animal, even if the dog's presence ameliorates the symptoms of the student's disability. Any breed of dog can qualify as a service animal. No animals other than dogs qualify as service animals (save a limited exception for miniature horses).

#### Locations Generally Allowed

Once a student with a disability has established that his or her dog is a service animal, Titles II and III of the Americans with Disabilities Act (ADA) generally require public and private institutions to permit the animal to accompany the student in all campus locations where students are allowed to go, including classrooms, residence halls and dining areas.

#### Establishing that a Dog is a Service Animal

If a student brings—or requests to bring—a dog on campus and the student's need for a service animal is not obvious, then the institution is permitted to ask the student only two questions to determine whether the dog qualifies as a service animal:

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

If the student's need for his or her dog as a service animal is obvious (e.g., a blind student appears on campus with a guide dog, or a nonambulatory student appears on campus with a dog pulling the student's wheelchair) then the institution cannot ask those two questions; the student need not answer any questions or provide any additional information to establish that the dog is a service animal.

#### Information an Institution Cannot Request in Connection with a Service Animal Accommodation Under the ADA

Notably, in deciding whether to grant a service animal accommodation under Titles II or III of the ADA, an institution cannot:

- Ask questions about the student's disability;
- Require the student to provide any medical documentation;

- Require any documentation for the dog, such as certification or training documentation;
- Require the service animal to wear a tag, vest or other form of identification as a condition of its use as a service animal; or
- Ask that the dog demonstrate its ability to perform its work or task.

Service animals are not exempt from local animal control or public health requirements. Accordingly, service animals are subject to local laws concerning dog vaccinations, licensing and registration that apply to all dogs.

Local laws (and university policies) that require mandatory registration of service animals as a condition of their use in public places are not permissible under the ADA. However, institutions are permitted to maintain a voluntary registry program for service dogs and provide tags or other forms of identification in connection with the program if it serves a valid public purpose, such as to ensure that first responders are able to look for and identify service animals in the event of an emergency.

#### **Some Limitations on the Institution's Obligation to Accommodate**

The ADA requires that service animals be under the control of their handler at all times. This means that service animals must be harnessed, leashed or tethered, unless these devices interfere with the service animal's work or the student's disability prevents using these devices. In that case, the student or handler must maintain control of the animal through voice, signal or other effective controls. A service animal is not "under control" if it barks repeatedly in a lecture hall, theater, library or other quiet place. However, a service animal is not "out of control" if it barks just once, or barks because someone has provoked it.

The ADA does not require institutions to provide care or food for service animals. Also, institutions can exclude service animals from an area if admitting them would "fundamentally alter" the nature of the goods, services, programs or activities provided or impose an undue financial or administrative burden. In most settings, the presence of a service animal will not result in a fundamental alteration. However, there are some exceptions. For example, restricting service animals from a particular area of a dormitory reserved specifically for students with allergies to dog dander could possibly be upheld as a valid exclusion.

A service animal may not be excluded based on assumptions or stereotypes about the animal's breed or how the animal might behave, and another individual's fear of dogs is not a valid reason for denying access or refusing service to a student using a service animal. However, if a particular service animal behaves in a way that poses a direct threat to the health or safety of others, has a history of such behavior, or is out of control and the student or handler does not take effective action to control it, the animal may be excluded. Further, service animals that are not housebroken may be excluded. If an animal is excluded for these reasons, the institution must still offer the student the opportunity to remain on the premises and obtain services without the animal's presence.

*Client Tip: Institutions should ensure that they are familiar with applicable laws and regulations concerning service animals.*