

## General Guidance on Service & Therapy Animals in Schools

Please find below our summary for Multiline members regarding service and therapy dogs in schools. This is general information and does not constitute legal advice. Members should consider seeking legal advice when making determinations regarding school policies and procedures and when reviewing individual requests.

### General Information

Under the ADA (federal law), school districts are required to make reasonable modifications in their policies, practices and procedures when necessary to accommodate people with disabilities. This includes the need for schools to modify any policies or procedures it may have regarding animals on school property.

Under Vermont's Fair Housing and Public Accommodation Act (VFHPA), school districts cannot prohibit an individual (employee, student or visitor) with a disability accompanied by a service animal or an individual training an animal to perform as a service animal for an individual with a disability from bringing the service animal on school grounds. (See 9 V.S.A. § 4502(b)).

Schools are required to meet the requirements of whichever law is most generous. The only difference between the ADA and Vermont law is that Vermont's law provides that a service animal who is still in training to be considered a service animal. Federal law does not. Otherwise, the legislature was clear when it passed VFHPA that Vermont's law is intended to be implemented and construed consistent with the ADA. Rules adopted are also required to not impose additional or higher standards, duties or requirements than required by the ADA. (See 9 V.S.A. § 4500)

A service animal is "a dog that is individually trained to do work or perform tasks for a person with a disability."<sup>1</sup>

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<sup>1</sup> Miniature horses may also meet the criteria to be a service animal. The school district should perform additional analysis to determine whether it can accommodate a miniature horse. Please call your school district's legal counsel if faced with a request to accommodate a miniature horse as a service animal



The school must presume an animal is a service animal if it is obvious that the dog is a service animal. For example, the individual is blind and dog is a Seeing Eye dog.

When it is not obvious that the animal is providing services to a person with a disability, to determine whether the dog is a service animal the school district may only ask two questions:

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.

Tasks a service dog may be trained to provide include but are not limited to:

- Guiding people who are blind
- Pulling a wheelchair
- Alerting and protecting a person who is having a seizure
- Reminding a person with mental illness to take prescribed medications
- Calming a person with PTSD during an anxiety attack

Absent training to perform a specific task or work related to the individual's disability, the animal is not a service animal. A doctor cannot write a note to qualify an animal as a service animal. The individual must be able to answer yes to question number one and identify the task or work the service dog performs related to the disability.

The school district cannot:

1. Ask the individual about his/her disability
2. Ask for medical documentation
3. Require a special identification card or training documentation; or
4. Ask the dog to demonstrate its ability to perform the work or task

If the dog is considered to be a service animal, based on the criteria above, then the individual and his/her service animal must be allowed to bring the animal in all areas where members of the public are able to go. This includes the cafeteria, classrooms, and the playground.

Once granted approval for the service animal to be on school grounds it is the individual's responsibility to care for the animal. The school district is not required to provide care or food for the animal.<sup>2</sup> The individual is required to:

1. Keep the dog harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices.

2. Individual must maintain control of the animal through voice, signal or other effective controls.

If the animal, through its behavior, is disruptive to the school's operations, the school district may be able to request its removal. Determinations are made on a case-by-case basis.

Schools can ask to have a service animal removed, as a safety concern, under the following circumstances:

1. The dog is out of control and the handler does not take effective action to control it. Under control also means that the service animal should not be allowed to bark repeatedly in a disruptive manner; or
2. The dog is not housebroken.

If the dog is removed, the school district is obligated to provide services in the dog's absence.

Schools cannot cite allergies or fear of dogs as a basis for denying entry of the service animal. If another student or an employee has a dog allergy, the school will need to accommodate both students or the student and the employee. The only way to be exempt from the service animal rule is to be able to demonstrate that allowing the service dog on school property will "fundamentally alter" the services, programs or activities provided. It is unlikely a school district will be able to demonstrate this.

Schools are not automatically required to permit therapy dogs or assistance animal for visitors. Under both federal and state law, the school district is only required to permit service dogs on school property. If a member of the general public, such as a parent or voter, asks for a reasonable accommodation for a therapy animal that does not otherwise qualify as a service animal, the school district should contact legal counsel to assist with making a determination about whether you may be required to make a public accommodation.

Both students and employees may be able to make a request for an accommodation for a disability. An employee needs to submit an accommodation request and will need to be able to demonstrate that they have a disability and how the animal will help the individual perform his or her job. Under the ADA, a student has a right to have a service dog present. A student may have a therapy or assistance animal as a part of his or her IEP or 504 plan if the animal is necessary for the student to receive a free and appropriate education (FAPE), even if the animal will not meet the definition of a service animal. This is a determination made by the IEP or 504 team. There is no right for a student to have support animals, therapy animals or companion animals. Decisions are made on a case-by-case basis.

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<sup>2</sup>The school district may need to provide some assistance to enable a particular student to handle his or her service animal.