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The Federal Laws of Helping Paws

By Bryce Young August 19th, 2016

They're furry. They're cute. They serve a life-saving, independence-giving purpose. They are service dogs... and they are incredible.

As amazing as service dogs are, however, the laws governing them can represent uncharted territory or present novel circumstances for postsecondary educational institutions. In addition to providing other required accommodations for students with disabilities, institutions must master the specific federal protections afforded to individuals with service dogs (not to mention state and local laws, which are topics for another article). In ensuring compliance, institutions must constantly be adapting deceptively straightforward (and slim) guidance to the constant stream of unique situations presented by students with disabilities who utilize various types of animals that purport to serve numerous disability-related tasks. This type of square-peg-in-a-round-hole compliance requires adherence to a well-reasoned process rather than a formulaic, yes-or-no result.

To help guide that process, this article offers a primer — written from the perspective of an attorney who focuses on representing postsecondary educational institutions and who also has a service dog — on some of the do's and do not's when a student with a disability requests an accommodation to permit a service animal at your institution.

'Golden (Retriever)' Guidance for Institution-Wide Policies

Do not assume all dogs are service dogs under the Americans with Disabilities Act (ADA).

Due to their usefulness, service dogs are exploding on the scene across the country. It seems that there are dogs of all breeds, wearing all colors of vests, being "registered" with various databases and performing all sorts of tasks. However, do not let these distractions fool you — the ADA is actually fairly narrow in its protections relating to service dogs. In fact, the rising confusion relating to service dogs prompted this year's International Assistance Dog Week to focus on educating people about the differences between service dogs, therapy animals and those just along for the ride.

First and foremost, only dogs (and miniature horses to a different degree) are covered by the ADA. "Service" turkeys and rabbits, as helpful as they may be, are not afforded protection under the ADA. However, they may qualify for protections under other laws, such as the Air Carrier Access Act, Fair Housing Act, and/or Rehabilitation Act of 1973.

Similarly, therapy or emotional support dogs are not service dogs under the ADA. Rather, the ADA protects only those dogs that have been individually trained to do work or perform a task for a person with a disability. Despite many assertions to the contrary, there is no mandatory "registry" for service dogs, nor are service dogs required to wear certain vests or colors. Thus, if it is not readily apparent that the dog is a service dog, an institution may ask the student only 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? If the dog is required because of a disability and has been trained for a particular task related to that disability, then the dog is a service dog and should be permitted to accompany the student. However, if the dog is not trained to perform a task but rather its presence alone is calming or therapeutic to the person, then it is not a service dog.

Related; the ADA does not permit institutions to ask for documentation regarding the service dog's abilities, where the dog was trained or about the person's disability. However, an academic institution may exclude a service dog if the person with a disability fails to keep the dog under control. If that occurs, the person with the disability should still be afforded the opportunity to attend without the service dog.

Do follow your reasonable accommodation process for non-service animals.

The analysis is not necessarily over just because the animal is not a service dog. A person with a disability may request a therapy or emotional support animal to be permitted as a reasonable accommodation under Section 504 of the Rehabilitation Act of 1973 and/or the Fair Housing Act. In those instances, an academic institution should follow its reasonable accommodation process and engage the student in the interactive process regarding the therapy or emotional support animal, particularly as it relates to on-campus housing or employment.

Non-ADA federal law is less clear as to whether an institution must permit an emotional support animal into its public areas (such as classrooms) as a reasonable accommodation, but the best practice is likely to engage in the interactive process with the student. These laws are meant to be floors to safeguard the rights of individuals with disabilities, and thus institutions are permitted (if not encouraged) to provide additional accommodations than those required as a bare minimum to comply with federal law.

Do not ignore unknown animals on campus.

Academic institutions may be exposing themselves to liability if they permit a person to bring an animal into a class without confirming the animal is permitted to be there by law or institutional policy. For example, if a dog that does not qualify as a service dog (and is not otherwise permitted as a reasonable accommodation) bites someone, the person who was bit will likely attempt to sue the institution for knowingly permitting a dog on the premises (even though that dog was likely banned in the institution's written policies). In the postsecondary education context, the academic institution is almost certainly more able to pay for damages than a fellow student (who actually owned the dog). Therefore, the institution becomes a favorite target for litigants (in addition to the owner of the dog). Even if successful in defeating the lawsuit, the institution will need to incur litigation expenses to do so.

'Pointers' for Interacting with a Person with a Disability with a Service Dog

Do focus the conversation on the individual with the disability.

Service dogs are excellent ice-breakers for meeting a person with a disability. They appeal to all demographics, and thus talking about a service dog is a very easy and smooth introductory topic to discuss with a person with a disability. However, they are just that — a conversation *starter*, and not a conversation in and of itself. As such, you should try to shift the focus of the conversation onto the person with a disability and get to know her as well as learn about her dog. The person with a disability will appreciate the focus on her (especially since she has had the conversation about her dog countless times before), and you will likely make a valuable addition to your institution's enrollment (or, at the very least, develop your institution's reputation for being accommodating and welcoming to people with disabilities).

Do not interact with a service dog.

We all know not to pet a working service dog... right? *Right?* However, the general rule of etiquette is much broader than that. In short, the only person who should be interacting with a working service dog is the person for whom the dog is working. This includes talking to, staring at or otherwise giving attention to the dog.

Although seemingly harsh, this rule makes perfect sense when you consider the purpose behind it. A service dog performs tasks that require concentration and focus from the dog, and a service dog that receives attention from others (or becomes accustomed to receiving attention from others) can be distracted mid-task. Beyond a mild annoyance to most people, distracting a service dog can endanger the person depending on the dog to finish the task as directed. For example, one of the tasks of a service dog can be to brace itself so that a person in a wheelchair can put weight on the dog's shoulders to help re-position herself — thus, a service dog moving during the brace (e.g., to greet a well-meaning passerby) can easily cause the person to fall out of her wheelchair. Similar results occur when the dog is tasked to help guide a person across a street, go get help, detect a seizure, etc.

At most, if you must address the dog, ask the person with the service dog if you may interact with the dog and engage only if — and to the extent — the owner allows. People using service dogs handle this situation differently depending on their comfort level and need for the dog to focus exclusively on them, and therefore will be able to give the best instruction for each situation. Please be aware that it is not a personal rejection of you if the person with a disability declines your invitation to pet her service dog.

Do be in awe of service dogs.

Many service dogs have over 100 commands (which is apparently, as I'm often told, more commands than spouses/children/bosses/politicians know). Stated otherwise, that is 100 tasks for providing independence and safety for people with disabilities. They can help open doors, pick up dropped items as small as a dime, get help if a person falls, detect a seizure, minimize the effect of an anxiety attack on a veteran suffering from post-traumatic stress disorder, detect life-threatening allergens, etc. The list goes on and on and on. Moreover, service dogs are trained by individuals (often volunteers) who donate upwards of two years of their time, financial resources, and love to raise and train the service dog, all the while knowing their goal is for the dog to be placed with

somebody else. So, the service dog you see walking down the street represents years of love, sweat and tears of many people.

On a macro level, whole industries are springing up because of service dogs. For example, the Bergin University of Canine Studies offers associate, bachelor and master degrees in how to work with and train service dogs (and the volunteers working with them). Similarly, research is being conducted to determine how to utilize service dogs in new fields and unconventional ways, such as to detect insects in crops, warn of cancer and other medical ailments and as first responders to locate survivors and identify dangerous substances. The exploration of the talents of service dogs is still in its infancy, and will continue to rapidly grow in the next decade.

In short, service dogs are awesome ... and it is great for institutions and their personnel to acknowledge the vital role these animals play in people's lives (and society in general).

Conclusion

As noted, these are just a few guiding principles to consider in helping your institution efficiently and legally address the needs and concerns of its students with disabilities utilizing service animals. For more guidance or for specific advice, please contact an attorney who can help guide you through this process, as well as facilitate training for the personnel at your institution. By drafting current and well-reasoned policies, creating checklists to ensure compliance with those policies and providing training for your personnel to invest into the policies, your institution will both respect the rights of people with disabilities and minimize the stress and financial burden of defending against a potential discrimination lawsuit.

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