
FOR YOUR INFORMATION

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News for School and Municipal Clients

Service Dogs in School

A blog devoted to special education issues recently advanced the proposition that children with autism should be able to bring a service dog to school on the basis that service dogs can act as a “social bridge to other children,” can help children with “dangerous behaviors like elopement,” and can improve an autistic child’s focus on his or her school work, particularly “children who have issues with literacy” who “have read to the attention of service dogs without judgment or stigma.” Charles P. Fox, “Special Education Law Blog,” February 10, 2006. As the blogger points out, “[t]he idea of having dogs in school is still novel.”

Recent postings on the mailing list of the National Association of Guide Dog Users referred to an incident in California in which a school district supposedly responded to an inquiry about providing access to a parent who used a guide dog by stating that the parent would only be allowed on campus after school hours when all the children had gone home. Another posting on that same mailing list was from a parent who was engaged in a “months long battle” with the school district because it had allegedly denied her child’s access to school, so long as he has a service dog.” Allegedly the district took the position that her son, who had been diagnosed with Asberger’s, was not disabled and, therefore, not entitled to the company of a service dog.

What is a service dog? The most familiar service dog is, of course, the “seeing eye dog” used by some individuals who are visually impaired. According to a 1996 publication of the U.S. Department of Justice, the Americans With

Disabilities Act defines a service dog as any guide dog, signal dog or other dog individually trained to provide assistance to an individual with a disability. Service dogs are trained to perform some of the functions that an individual with a disability cannot perform for him/herself. Service dogs perform such functions as alerting persons with hearing impairments to sounds; pulling wheelchairs or carrying and picking up things for persons with mobility impairments; and assisting persons with mobility impairments with balance.

The rules regarding the rights of individuals with disabilities to enter onto business premises accompanied by their service dogs are now fairly well-known. See “Commonly Asked Questions About Service Animals in Places of Business.” www.usdoj.gov/crt/ada/animal. Essentially, the ADA requires places of public accommodation to allow a disabled individual to be accompanied on the premises by a service dog. The rules are not as well-established with respect to the right of a pupil with a disability to attend school with a service dog. In fact, there is only one reported court decision dealing with this issue, a 1990 decision from a U.S. District in California, *Sullivan v Vallejo City Unified School District*, 731 F. Supp. 947 (1990). In that case, a 16-year old who had cerebral palsy, learning disabilities and right-side deafness, and used a wheelchair for mobility, filed an action against the school district for violations of Sec. 504 (of the Rehabilitation Act of 1973) and state law because the district refused to allow the student to bring her service dog to school. The District first argued that the student’s parents should have convened an IEP meeting for the purpose of

determining whether the student required the assistance of the service dog to obtain the educational benefits guaranteed to her under special education law. The student countered that she did not dispute that the IEP created for her was adequate from an educational standpoint, nor was she alleging that the service dog was “educationally necessary.” Rather, she argued that the district discriminated against her on the basis of her disability by arbitrarily refusing her access to school if she was accompanied by her service dog.

The district sought to justify the exclusion of the plaintiff’s service dog on two grounds: (1) that the dog was unnecessary, and (2) on space and health concerns. The court rejected the first defense based on the district’s admission that due to plaintiff’s physical limitations she had to rely on others to perform various physical tasks that she could not perform herself, including tasks which could be performed by a service dog, such as retrieving dropped items. The court rejected the second defense, based on space and health concerns, as being legally insufficient to override the right of a disabled person who uses a service dog “to have full and equal access to public facilities accompanied by his or her dog.” These reasons did not satisfy the district’s burden to demonstrate that reasonable accommodations were “neither practicable nor possible” for purposes of Sec. 504.

The court further took the district to task for having placed plaintiff in a classroom taught by a person known to have severe allergies to animal dander. The court did add, however, that it would be reasonable for the district to take steps to insure that plaintiff’s choice [to bring a service dog to school] is accommodated in a manner that does not injure the legitimate and legally protectable rights of others.” Thus, the court

stated “her placement will likely have to be changed once the service dog is incorporated into her school program due to the allergies of her primary teacher.”

The likelihood that we will see increasing court activity on this subject is high, especially in connection with students with developmental or mental disabilities. The debate over effective therapies for serving students with autism, for instance, continues unabated, and there are now organizations, such as Autism Service Dogs of America, devoted to this topic. Its website represents: “In most cases, the dog accompanies the child at all times when the child leaves home. The dog goes to school with the child and the presence of the dog calms the child, reduces emotional outbursts and serves as a positive social link for the child to their home, school and community.” Another organization, the Psychiatric Service Dog Society, is a non-profit organization “dedicated to responsible Psychiatric Service Dog (PSD), education, advocacy, research and training facilitation.” According to its website, the society provides “essential information for persons disabled by severe mental illness, in which to train a service dog to assist with the management of symptoms.”

Some school districts have adopted policies regarding dogs in schools. In September 2003, the Lake Washington School District in King County, Washington, adopted a policy that, while generally prohibiting dogs in school, allows service dogs serving a parent, child, or visitor to be on premises, provided an up-to-date vaccination record is available.

School districts faced with a request to allow a disabled child to be accompanied by a service dog in school must not reject the request out of hand but should seek the advice of legal counsel.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

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