



Individuals with Disabilities and Their Assistance Animals: A Brief History and Definitions

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Introduction

The earliest evidence of animals assisting humans is found on wall paintings of dogs helping people navigate their environment. These paintings are dated to the 1st Century, Common Era.¹ Records from various locations throughout Europe document efforts to train guide dogs to assist blind individuals beginning in the late 19th Century.² Following World War I, the large number of injured soldiers with visual impairments seems to have been an impetus for increased efforts to train guide dogs in Germany in 1916 and soon after in Switzerland. Dorothy Harrison Eustis, an American who was training dogs for the military and police in Europe at this time, learned of the guide dog schools and wrote about them for the Saturday Evening Post. The article generated a lot of interest in the United States including requests that Ms. Eustis open a similar guide dog school in this country. She ultimately established the Seeing Eye School in New Jersey in 1929, which is the longest continually operating program in the world to train guide dogs for visually impaired individuals.³

Dogs that assist individuals with mobility is the first type of service animal that history records. However, the variety of

¹ International Guide Dog Federation at <https://www.igdf.org.uk/>

² *Id.*

³ <http://www.seeingeye.org/about-us/history.html>

animals that provide supports and services to individuals with different types of disabilities has grown. This document provides definitions of various types of assistance animals beginning with the Americans with Disabilities Act (ADA) definition of a service animal.

Americans with Disabilities Act (ADA) Service Animal Definition

Not all animals that individuals with disabilities rely on to minimize limitations resulting from their disabilities meet the ADA definition of a service animal. The ADA has a very specific definition of what animal is a service animal. ADA Title II and III regulations by the Department of Justice (DOJ) and Department of Transportation (DOT) originally defined service animals as “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability.”⁴ This open-ended definition of the type of animal covered created some unintended consequences. For example, individuals made attempts to claim their parrot, snake, ferret, or sugar glider was a service animal that worked or

⁴ 28 C.F.R. §36.104; this regulation was amended in 2010 to reflect the current definition; 49 C.F.R. § 37.3.

performed tasks for the individual and therefore protected by the ADA.⁵ These efforts were generally unsuccessful.

In response, DOJ clarified their definition in regulations effective March 2011. However, DOT maintains the original definition of service animals in its regulations which cover public (ADA Title II) and private (ADA Title III) transportation and continues to allow animals that meet the original definition of service animals.⁶

To complicate the matter, regulations that implement Title I of the ADA (employment related issues for individuals with disabilities), do not define service animal at all. Although there is some legal uncertainty as to whether the DOJ regulations cover all titles of the ADA, it appears at

⁵ Floyd, W. and Vogan, S. *Feature: Wild Kingdom: ADA and Service Animals*. 29 S. Carolina Lawyer 47 (July 2017).

⁶ <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/frequently-asked-questions#18>; <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/doj-rule-service-animals-and-mobility-devices-note>

this point that the new definition as outlined in the DOJ regulations only covers ADA Title II and Title III entities.⁷

The service animal definition under both Titles II and III, other than transportation services regulated by DOT, is now:

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.⁸

The updated DOJ regulations clearly state that other species of animals, whether wild or domestic, trained or untrained, are not service animals for purposes of this definition. Therefore, under these regulations, only dogs are included in the ADA definition of service animal under Titles II and III.

To meet the ADA service animal definition, dogs must be individually trained to do work or perform tasks that benefit the individual with disability. The regulations go

⁷ For a review of the case law regarding animals in employment under Title I, please see Service Animals and the ADA at <https://adata.org/publication/service-animals-and-individuals-disabilities-under-americans-disabilities-act-ada>.

⁸ 28 C.F.R. §35.104; 28 C.F.R. §36.104.

into some detail of the various kinds of work that service animals (dogs) can perform for individuals. These tasks can include physical, sensory, psychiatric or intellectual tasks or those that will assist individuals with a mental disability.⁹ According to the DOJ guidance, service animals are “working animals,” not household pets or “[d]ogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.”¹⁰

A service animal can be excluded from any ADA Title II or III public service or accommodation if any of the following situations exist:

1. The dog is out of control and the handler cannot get the animal under control; or
2. The dog is not housebroken.¹¹

If one or both of these situations occurs, the handler can be asked to remove the dog, but the individual with disability must still be welcome to participate in the service or accommodation.¹²

This ADA service animal definition under the DOJ is clearly limited to dogs. However, Titles II and III regulations also

⁹ *Id.*

¹⁰ https://www.ada.gov/service_animals_2010.htm

¹¹ 28 C.F.R. §35.136(1); 28 C.F.R. §36.302 (c)(1-2).

¹² *Id.* at (c)(3).

include an additional requirement to make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with disability in programs and services under those ADA titles.¹³ To allow flexibility in situations where using a horse would not be appropriate, the final regulations do not include miniature horses in the definition of "service animal."¹⁴

Although the regulations themselves do not define miniature horses, DOJ guidance provides the following description:

Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.¹⁵

As with service dogs under ADA, a miniature horse must be individually trained to perform a specific task or provide a service for the individual with disability.¹⁶ Additional regulatory language includes four factors that should be considered in any determination regarding the reasonableness of allowing a miniature horse:

¹³ 28 C.F.R. §35.136(1); 28 C.F.R. §36.302(C)(9).

¹⁴

https://www.ada.gov/regs2010/factsheets/title3_factsheet.html

¹⁵ https://www.ada.gov/service_animals_2010.htm

¹⁶ 28 C.F.R. §35.136(i).

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- (A) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
 - (B) Whether the handler has sufficient control of the miniature horse;
 - (C) Whether the miniature horse is housebroken; and
 - (D) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.¹⁷

Service dogs assisting blind individuals to navigate their environment (guide dogs) are probably the most familiar and understood type of service animal. This is due in part to the obvious tasks they perform for visually impaired individuals and their long history of rigorous training. Dogs that assist individuals with physical impairments other than blindness, such as deaf individuals (signal dogs), and those with seizures (seizure alert or seizure response dogs), are

¹⁷ 28 C.F.R. §35.136(i); 28 C.F.R. §36.302(c)(9).

also becoming more common.¹⁸ With the addition of the ADA regulations covering miniature horses in some circumstances, these animals may also be seen more often in public services and accommodations. Assuming that the individualized training to perform a task or service for an individual with a disability has occurred, and none of the exceptions apply, service animals and miniature horses will generally be covered under ADA Titles II and III.

The ADA is a federal civil rights law with national reach. However, it is important to remember that states can adopt a different service animal definition for purposes of state enforcement. Many jurisdictions have passed such laws. When a state law provides a broader definition—or broader protections—the state law will be applied in that jurisdiction. For example, some states have made it a criminal offense to present an animal as a service animal when in fact it is not; there is no such federal offense. How the service animal rule is enforced in any given situation

¹⁸ Ensminger, J. and Breitkopf, F. *Evolving Functions of Service and Therapy Animals and the Implications for Public Accommodations Access Rules*. Michigan State University College of Law (2009); Brown, S.W. and Goldstein, L.H. *Can seizure-alert dogs predict seizures?* Epilepsy Research (2011) 97, 236-242; <http://www.pbs.org/wgbh/nova/next/body/seizure-alert-dogs/>

will depend on whether the federal ADA rules are applied, or the situation occurs in a state with a different definition. For a review of state laws relevant to service animals in the United States, Michigan State University's Animal Legal and Historical Center provides a comprehensive review.¹⁹

Other Assistance Animals

Comfort animals, search and rescue animals, therapy animals, and emotional support animals are not covered by ADA Titles II and III regulations. Individuals with disabilities with these types of assistance animals do not have the same rights as do handlers of ADA service animals to bring their animals in spaces covered by Title II and III. Whether they are allowed under Title I of the ADA is still unsettled law. For more information on the court decisions regarding service animals under the ADA, see the ADAKT publication located at <https://adata.org/publication/service-animals-and-individuals-disabilities-under-americans-disabilities-act-ada>.

Therapy dogs and comfort dogs are often used interchangeably although some professionals make a distinction between these two types of assistance dogs.

¹⁹ <https://www.animallaw.info/topic/table-state-assistive-animal-laws>

The following paragraph from the Federal Emergency Management Agency (FEMA) describes the difference:

Therapy dogs operate in non-emergency environments: think of a college library packed with stressed students during finals – an environment that is definitely tense, but different from an active emergency. Comfort (or “crisis response”) dogs work during active crises and in emergency situations—both natural and manmade. They can offer a calming presence and a welcome distraction to those who have been impacted by disasters, often in shelters or in common public gathering spaces.²⁰

Both types of dog work in situations where stress levels are high. Therapy dogs are often household pets that receive extensive training to ensure that they appropriately behave in institutional settings such as hospitals, emergency trauma centers, or halfway houses for offenders.²¹ Therapy dogs are not trained to perform a

²⁰ <https://www.fema.gov/blog/2016-03-22/beginners-guide-comfort-dogs>

²¹ Although there is ongoing research on the benefits of therapy animals, there is no consensus as to whether or how they assist individuals. See *Washington Post*. *Therapy Animals are Everywhere. Proof that they help is not*. July 2 2017.

specific task for an individual with a disability. Comfort animals receive extensive training and in some cases must pass rigorous certification standards, but also lack individualized training to perform specific tasks for an individual.²²

Search and rescue dogs are a specialized subset of comfort or crisis response dogs. They are highly trained to work with law enforcement, fire service and/or emergency medical responders and their tasks include finding lost, injured, or deceased individuals. The training and certification requirements differ depending on the agency they work with and the role they play. However, the training is extensive and the standards demanding. The Search and Rescue Dogs of the United States (SARDUS) has established national certification standards and provides training and on-going continuing education.²³ These animals are not trained to perform a specific task for an individual with a disability.

An emotional support animal has been defined as an animal that “works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides

²² Also known as Animal-Assisted Activities/Animal Assisted Therapy dogs. Animal-Assisted Crisis Response National Standards (2010).

²³ <http://www.sardogsus.org/index.html>

emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”²⁴ This definition comes from guidance issued by the Housing and Urban Development (HUD) and therefore arguably specific to that agency. The DOJ regulations implementing ADA Titles II and III described above make a clear distinction between this type of assistance animal and a service animal but acknowledge that emotional support animals may be permitted under other federal law and perhaps in Title I employment situations:

There are situations, particularly in the context of residential settings and employment, where there may be compelling reasons to permit the use of animals whose presence provides emotional support to a person with a disability. Accordingly, other federal agency regulations governing those situations may appropriately provide for increased access for animals other than service animals.²⁵

The primary difference between search and rescue dogs, therapy or comfort animals, emotional support animals, and service animals seems to be the specialized training

²⁴ Trasvina, J. U.S. Dept. of Housing & Urban Dev., Service animals and Assistance Animals for people with Disabilities in Housing and HUD-Funded Programs 1, 2 (2013).

²⁵ Proposed DOJ regulations to ADA Title II and III at 73 Fed. Reg. 34516.

that service animals receive to perform a specific task or tasks for an individual with a disability. Although every service animal under the ADA must have individualized training to meet the needs of the person with a disability, there is no requirement that the training be done by a professional. The individual with a disability who will be handling the animal can provide the training. In addition, there is no approved training curriculum or certification requirement to be a bona fide service animal for ADA purposes, there is no approved vest or gear that is mandatory, and no central database of approved “service animals under the ADA.” Nor is there regulatory oversight of service animal training programs by the federal government. When draft regulations addressing the definition of service animals were posted by DOJ in 2010, comments stressed the importance of requiring some form of certification or minimum training standards to ensure that the public could distinguish between untrained pets and service animals. DOJ declined to adopt such requirements.²⁶

Some of the confusion regarding which types of animals can accompany an individual with a disability in various settings is due to additional federal laws with different definitions of permissible animals than the definition of service animal under the ADA. These laws include the *Fair Housing Act* (FHA) and the *Air Carrier Access Act* (ACAA).

²⁶ *Id.* at 3524.

The rights of individuals with disabilities to have assistance animals, including service animals, under these two federal laws are described in a separate product available at <https://adata.org/publication/assistance-animals-FHA-Section-504-ACAA>.

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