



# Beware of the Dog

## Legal issues associated with service animals in schools

By Mark Paige and Julie Fisher Mead

In 2017, the U.S. Supreme Court issued an important decision, *Fry v. Napoleon Community Schools*, regarding service dogs in public schools. At issue in *Fry* was the technical legal question of whether parents should have pursued their legal claims under the Individuals with Disabilities Education Act (IDEA) or could instead use remedies available under Section 504 of the Rehabilitation Act/Americans with Disabilities Act (ADA).

For lawyers and advocates, this question is incredibly important

when filing a case or contesting a decision made by a school district. *Fry* provided some needed clarification in their work going forward. Unfortunately, *Fry*'s holding is less relevant to the issues many school principals face in relation to service animals. Indeed, the underlying legal question in *Fry* is not something that school principals generally address in their work.

For school administrators, however, *Fry* calls attention to the growing use of service animals in schools. *Fry* also provides a reminder about the scope

of IDEA, Section 504, and the ADA and how they intersect. For these reasons, we suggest that this is an appropriate time to revisit the various legal issues that might arise in this context.

### Common Myths

What follows is a brief analysis and commentary on common myths or misconceptions about service animals in schools. Each situation is unique, of course, and specific questions should be addressed with your own district's counsel.

1. Any animal that provides help or comfort to a child with a disability is a service animal.

*False.* ADA has a specific definition of a service animal: “Service animal means 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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. The crime-deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.” (28 C.F.R. §35.104)

2. Whether or not a child with a disability has a right to a service animal directly relates to IDEA’s concept of a free appropriate public education (FAPE).

*False.* Some issues of nondiscrimination are not captured in IDEA’s FAPE analysis. As the Supreme Court explained in Fry: “A school could offer a FAPE to a child with a disability but still run afoul of the laws’ ban on discrimination. [The Office for Civil Rights] analogized the school’s conduct [in denying access to a child’s service dog] to ‘requir[ing] a student who uses a wheelchair to be carried’ by an aide or ‘requir[ing] a blind student to be led [around by a] teacher’ instead of permitting him to use a guide dog or cane.”

Issues of general nondiscriminatory access (as guaranteed by Section 504 and ADA) might go beyond what is required for FAPE (as guaranteed by IDEA, Section 504, and ADA). This issue is an example of the overlapping but different scopes of the three federal laws. An easy way to remember the distinctions between the IDEA and ADA/Section 504 is to focus on

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the purposes of the three acts. IDEA's purpose centers on the funding and delivery of special education and related services. In other words, its sole focus is FAPE. The purpose of both the ADA and Section 504 is non-discrimination, so those laws require attention to general issues of access that include but go beyond FAPE and what happens in the classroom. Use of a service animal is one of those issues.

**3. If a service animal is not required under an individualized education program (IEP), a school can deny a request for such a service animal.**

*False.* Section 504 requires public schools to provide “reasonable accommodations” for students with disabilities, quite apart from IDEA

closer to “care and supervision,” thus relieving a school district from providing services on those points. On the other hand, incidental assistance—if a student needed assistance to lead a dog outside to urinate, for example—would likely be considered an accommodation the school district is obliged to do. Similarly, if the only assistance a student needs to control a dog is untethering a leash from a wheelchair, that, too, would likely fall more closely under “accommodation.”

**5. Other students' allergies or concerns such as a fear of dogs would provide a basis to deny a request for a service dog that might otherwise be granted.**

*False.* If a person is allergic, for instance, it requires that both the

*False.* IDEA is silent on the issue of service animals, but it is quite clear about what related services are. Related services are those services necessary for the child to benefit from special education. However, that does not mean that anything and everything done for a child is a related service. First and foremost, a related service is provided by, and paid for by, the school. Schools are not responsible for providing or paying for service animals, so to list them as a “related service” is inappropriate.

An IEP team might want to mention a service animal in the section of the IEP where the team describes the child's levels of academic and functional performance. Using a service dog is really a functional performance issue—it is how a child has chosen to navigate the world. As an alternative, school officials might consider developing a Section 504 plan to address the issue of a service dog.

Expect to confront the use of service animals in your school, if you haven't already. In *Fry*, the Supreme Court clarified some of the legal issues surrounding which statutes might apply to a given challenge to a school district's decision on the use of service animals. But *Fry* should also spur us to refresh ourselves about the various other day-to-day issues that arise. Some state legislatures have also adopted laws that govern service dogs, so school leaders should familiarize themselves with any state provisions establishing additional requirements for service animals beyond those of ADA and Section 504. **□**

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requirements. Indeed, ADA has specific provisions related to service animals that apply to schools. Even if a child is receiving FAPE through an IEP, they might also be entitled to a service dog under ADA and Section 504 as a reasonable accommodation.

**4. The school is not required to provide care or supervision of the service animal.**

*True, but ...* The applicable regulations note that a public entity is not responsible for the “care or supervision” of an animal, so in the strictest sense, school districts need not provide such services. But where is the line between “care and supervision” and accommodation? Washing, feeding, or walking might be considered

student with a disability and the student with an allergy be accommodated (e.g., assigning students to different locations or classes). ADA regulations describe only two justifications for denying access to a service animal: (1) The animal is out of control; or (2) the animal is not housebroken. Importantly, the regulations also make clear that a service dog may not be removed even when out of control, as long as the handler takes effective action to control the animal.

**6. If a service dog is a reasonable accommodation for a student with a disability, schools must include that provision in a student's IEP as a related service.**