Service Animals

One of the many examples of the diversity of issues currently facing K-12 principals is the cluster of questions that arise upon the parental request, on behalf of a student with special needs, to bring a service animal to school. The threshold question is the meaning of service animal. The applicable regulations of the Americans with Disabilities Act (ADA) define a "service animal" as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability." Explaining that the functions of the animal must be directly related to the child's disability, the regulations provide the following examples: (a) for students who are blind or visually impaired—assisting with navigation; (b) for students who are deaf or hearing impaired—alerting to the presence of people or sounds, (c) for students with orthopedic impairment—pulling a wheelchair or providing other physical support; and (d) for students with other health impairments—alerting to seizure disorders or the presence of allergens.

The regulations permit schools to inquire, only if not readily apparent and without requiring documentation, whether the animal is required due to the student's disability and what are the functions for which the animal is trained. For an animal that meets this definition, these regulations require, with limited exceptions, that the school allow access to accompany the student. The basic exceptions are when the animal is out of the handler's control or is not housebroken. Finally, these regulations specify that the school's responsibility does not extend to the care or supervision of the animal.

The following case and accompanying question-and-answer discussion explore recent court decisions concerning applications of this regulatory framework and alternative sources of legislation or regulations.

The Case

D.P. is a student in New York state with autism, along with Angelman syndrome, epilepsy, asthma, and hypotonia. She is nonverbal, has balancing and seizure disorders, engages in "stimming," and wanders or elopes without perceiving danger. Her service dog is trained to perform tasks specific to her disability, such as detecting and alerting to oncoming seizures, providing deep pressure to alleviate stimming, and preventing elopement.

Per the child's individualized education program (IEP), the school provides her with a 1:1 aide and a 1:1 nurse. However, since September 2012, when D.P. started kindergarten, the school district has conditioned access of her dog on her parents providing a separate adult handler for the dog. The district maintains that D.P. is not able to provide the requisite handling, control, care, and supervision of the dog, but the parents contend that D.P. has gradually learned to tether and via hand gestures give commands to the dog. They have unsuccessfully requested that the district provide the limited necessary help, such as untethering the dog and assisting with commands, via the staff assigned to D.P.

The parents first filed a complaint with the U.S. Department of Justice (DOJ), which, along with the U.S. Department of Education's Office for Civil Rights, administers the ADA in school cases. On April 13, 2015, the DOJ issued a letter to the district opining that it was in violation of the ADA and specifying various remedial steps, including having school staff provide the parents' requested assistance, pay compensatory damages, and arrange for training to district personnel on their service animal obligations. DOJ warned of a possible lawsuit if the district refused to take these steps voluntarily.

In the absence of the requested resolution, the DOJ filed a lawsuit against the district.

What do you think was the judicial outcome of the lawsuit?

In *United States v. Gates-Chili Central School District* (2016), the federal district court reached a mixed outcome. First, the court concluded that "neither the statute, nor the regulation, require the school district to provide handling services for the dog." However, the court denied the district's motion for summary judgment, preserving for further proceedings whether the student was able to "handle" her dog. More specifically, the court ruled:

"If the only assistance she needs is to untether her from the dog, then … [the student] can be considered to be in control of [the dog]. On the other hand, if [the student] requires school district personnel to actually issue commands to [the dog], as opposed to occasionally reminding her to do so, then [she] cannot be considered in control of her service dog."

Have other courts reached the same conclusion under the ADA?

Yes, although the line-drawing between the student's handling and the district's non-care and non-supervision obligations were not exactly the same, largely but not entirely attributable to factual differences. First, in *C.C. v. Cypress School District* (2011), which is of lesser authority because it was an unpublished decision limited to a preliminary injunction, a federal district court in California concluded that the necessary accommodations—an available staff member's learning and use of a few commands plus holding the dog's leash only when student moved to another part of the school—were reasonable modifications rather than fundamental alterations. Second and of more weighty legal authority, in *Alboniga v. Broward County Board of Education* (2015), a federal district court in Florida similarly concluded that the limited task of assisting the child to lead the dog, who was tethered to him (and, thus within his control), outside the school to urinate was

not within the care and supervision (i.e., routine overall maintenance) exclusion. Finally, in *Riley v. School Administrative Unit #23* (2016), which was—like *C.C.*—an unpublished decision in response to a motion for a preliminary injunction, a federal district court in New Hampshire distinguished the previous two decisions "because [this student] cannot be tethered to [his service dog], use voice commands, or hold [the dog's] leash at any time throughout the day." As a result, the court concluded that the student could not be a handler and having a school employee perform these functions would constitute supervision.

Has there been corresponding litigation under other legislation or regulations?

Yes, on two different levels. First, at the federal level, the frequency and outcomes of the case law have been less extensive and parent-favorable under the Individuals with Disabilities Education Act (IDEA). More specifically, the IDEA rulings to date have been limited to the hearing or review officer level and based on the broader obligation of providing a "free appropriate public education" (FAPE). In the most recent decision, for example, a review officer in New York concluded that the proposed IEP for a student with autism constituted FAPE without the service dog, thus leaving the parent with the expense of the third-party handler.

Second, an occasional state has legislation or regulations specific to service animals in relation to public schools. The leading example, which has had a line of student-favorable access rulings, is Illinois. In the latest decision, *K.D. v. Villa School District* (2010), the state's appellate court ruled that the child's dog was entitled to access, because, based on its training and functions, it met the definition of a service animal. However, the ADA cases, based on their wider applicability and focus on the post-access issues, have largely eclipsed such state litigation.

Conclusion

The legal issue of service animals in schools have already evolved from access, which the ADA regulations largely resolve in favor of the student, to the respective responsibilities of parents and districts once the school's closed door has been opened. More specifically, if a service animal case arises in your school, I offer the following recommendation from my article in *West's Education Law Reporter* (2016) for your consideration in consultation with your district's legal counsel and with due attention to the specific facts of the case:

- Become familiar with the relevant subsections of the ADA regulations, which extend beyond students on IEPs to those who meet the broader definition of disability associated with 504 plans, and any applicable state law.
- Consider whether the animal qualifies under the applicable definition of service animal, but be careful to limit questioning to permissible inquiries and not to confuse educational necessity with discriminatory access.
- Make an individualized, knowledgeable-team assessment of the application of the permissible exclusions, including a narrow interpretation of the direct threat and fundamental alteration. For example, do not allow others' fear or allergies to be controlling considerations.
- In the usual situations where access is warranted, make sure it extends to all areas and activities accessible to other students and without any sort of surcharge that is not applicable to other students, including additional insurance or vaccinations.
- Finally, carefully make an objectively defensible fact-based determination whether any additional services that the child with a disability needs to handle the service animal are reasonable modifications, not either fundamental alterations or care and supervision. P

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