

Service Animals and Emotional Support Animals

Where are they allowed and under what conditions?



National Network

*Information, Guidance and Training on the
Americans with Disabilities Act by DBTAC*

Foreword

This manual is dedicated to Pax, a devoted guide dog, and to all the handler and dog teams working together across the nation. Guide dogs make it possible for their handlers to travel safely with independence, freedom and dignity. Guide dogs perform many tasks that enable their handlers to live independently in the community.

Pax has guided his handler faithfully for almost ten years. Together they have negotiated countless busy intersections and safely traveled the streets of many cities, large and small. His skillful guiding has kept his handler from injury on more than one occasion. He has accompanied his handler to meetings, restaurants, theaters, and social functions where he conducted himself as would any highly trained guide dog. Pax is a seasoned traveler and was the first dog to fly in the cabin of a domestic aircraft to Great Britain, a country that had previously barred service animals without extended quarantine.

Pax was born in the kennels of The Seeing Eye in the beautiful Washington Valley of New Jersey in March, 2000. He lived with a puppy-raiser family for almost a year where he learned basic obedience and was exposed to the sights and sounds of community life—the same experiences he would soon face as a guide dog. He then went through four months of intensive training where he learned how to guide and ensure the safety of the person with whom he would be matched. In November, 2001 he was matched with his handler and they have worked as a team since then.

Now, Pax is nearing the end of a successful career. He will retire with his handler's family where he will live with two other dogs. His life will be full of play, long naps, and recreational walks. It is the sincere hope of Pax's handler that this guide will be useful in improving the understanding about service animals, their purpose and role, their extensive training, and the rights of their handlers to travel freely and to experience the same access to public accommodations, transportation, and services that others take for granted.

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I. Introduction

Individuals with disabilities may use service animals and emotional support animals for a variety of reasons. This guide provides an overview of how major Federal civil rights govern the rights of a person requiring a service animal. These laws, including how to file a complaint, are listed in the last section of this publication. Many states may also have laws that provide a different definition of service animal. You should check your state's law and follow the law that offers the most protection for service animals.

II. Service Animal Defined by Title II and Title III of the ADA

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. Tasks performed can include pulling a wheelchair, retrieving dropped items, or pressing an elevator button. Emotional support, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. 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 handler's disability. It does not matter if a person has a note from a doctor that states that the person has a disability and needs to have the animal for emotional support. A doctor's letter does not turn an animal into a service animal.

Examples of a service animal:

- Guide Dog, or Seeing Eye^{®1} Dog is a carefully trained dog that serves as a travel tool for persons with severe visual impairments or who are blind.
- Hearing or Signal Dog is a dog that has been trained to alert a person with significant hearing loss or who is deaf when a sound, e.g., knock on the door, occurs.
- Psychiatric Service Dog can be trained to perform a variety of tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects. Tasks

1 <http://www.seeingeye.org>

performed by psychiatric service animals may include reminding the handler to take medicine; providing safety checks, or room searches, or turning on lights for persons with Post Traumatic Stress Disorder; interrupting self-mutilation by persons with dissociative identity disorders; and keeping disoriented individuals from danger.

- SSigDOG (sensory signal dogs or social signal dog) is a dog trained to assist a person with autism. The dog alerts the handler to distracting repetitive movements common among those with autism, allowing the person to stop the movement (e.g., hand flapping).
- Seizure Response Dog is a dog trained to assist a person with a seizure disorder. How the dog serves the person depends on the person's needs. The dog may stand guard over the person during a seizure or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance to sit down or move to a safe place.

Service animals are limited to dogs; however, entities must make reasonable modifications in policies to allow individuals with disabilities to use miniature horses if they have been individually trained to do work or perform tasks for individuals with disabilities.

III. Other Support Animals

- Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals. These animals provide companionship, relieve loneliness, and sometimes help with depression and certain phobias, but do not perform tasks that assist people with disabilities. They do not have special training to assist the person's disability like service animals.
- Therapy Animals are not legally defined by federal law, but some states have laws defining therapy animals. These animals provide people with therapeutic contact, usually in a clinical setting, to improve their physical, social, emotional, and/or cognitive functioning as well as being a motivation tool. They are not limited to working with people with disabilities.



IV. Handler's Responsibilities

The care and supervision of the service animal is the responsibility of the handler. Disregard of this care and supervision may result in the handler's rights being denied.

- An entity may deny access to a service animal whose behavior is unacceptable or in situations in which the person with a disability is not in control of the animal. Uncontrolled barking, jumping on other people, or running away from the handler are examples of unacceptable behavior for a service animal. A business has the right to deny access to a dog that disrupts their business. For example, a service dog that barks and disrupts another patron's enjoyment of the movie could be asked to leave. Businesses, airlines, public programs and transportation providers may exclude a service animal when the animal's behavior poses a direct threat to the health or safety of others. If a service animal is growling at other shoppers at a grocery store, the handler may be asked to remove the animal. Note: A decision cannot be based on the notion that an animal might threaten the safety of others, nor can the decision be based on a business person's assumptions or bad experiences with other animals. Each service animal must be considered individually.
- A service animal shall have a harness, leash, or other tether unless either the handler is unable because of a disability to use a harness, leash, or other tether; or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks. In these cases the service animal must be under the handler's control using voice control, signals, or other effective means.¹

¹ 28 C.F.R. 36.302(c)(4).

- The animal must be housebroken.²
- Service animal handlers are responsible for cleaning up after the animal.
- Service animals must be clean. Daily grooming and occasional baths may be required to keep animal odor to a minimum. Adequate flea prevention and control may be required.
- Service animals must be in good health.
- A handler may be required to show that the animal has a license required for all animals by a particular state or local law. Proof that the animal is current on all vaccinations required by law, such as rabies vaccinations, may also be required.
- An entity may also assess the type, size, and weight of a miniature horse in determining whether or not the horse will be allowed access to the facility.

² 28 C.F.R. 36.302(c)(2).

V. Handler's Rights

1) Public Facilities and Accommodations

Service animals are allowed in public facilities and accommodations. A service animal must be allowed to accompany the handler to any place in the building or facility where members of the public, program participants, customers, or clients are allowed to be. Even if the business or a public program has a “no pets” policy, it may not deny entry to a person with a service animal. Service animals are not pets. So, although a “no pets” policy is perfectly legal, it does not allow a business to exclude service animals.



When a person with a service animal enters a public facility or place of public accommodation, the person cannot be asked about the nature or extent of his disability, but may be asked two questions only - if the

animal is required because of a disability, and what work or task the animal has been trained to perform. A public accommodation may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation or a public entity may not ask even those two questions when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability. For example, the questions may not be asked if the dog is observed

guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability.¹

A place of public accommodation or public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.²

While service animals are allowed in public places, federal laws have no provisions for people to be accompanied by therapy animals in places of public accommodation that have "no pets" policies.

2) Employment

Laws prohibit employment discrimination because of a disability. Employers are required to provide reasonable accommodation. Allowing an individual with a disability to have a service animal or an emotional support animal accompany them to work may be considered an accommodation. The Equal Employment Opportunity Commission (EEOC) has never defined service animals.³ In the case of a service animal or an emotional support animal, if the disability is not obvious and/or the reason the animal is needed is not clear, then documentation may be required to establish the existence of a disability and how the animal helps the individual perform their job.

1 28 C.F.R. 36.302(c)(6).

2 28 C.F.R. 36.302(c)(8).

3 29 CFR 1630.16. The EEOC, in the Interpretive Guidance accompanying the regulations, stated that guide dogs may be an accommodation..."For example, it would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog for the employee."



Individuals who want to bring emotional support or therapy animals will face a greater hurdle in establishing that they need their animal at work. It will not be enough for them to present a prescription or a letter from their doctor stating that they require the animal in the workplace. They will have to describe in detail how the presence of the animal would help the employee in performing job tasks and be prepared to explain how the animal is trained to behave in the workplace. A person seeking such an accommodation may suggest that the employer permit the animal to accompany them to work on a trial basis.

Both service and emotional support animals may be excluded from the workplace if they pose an undue hardship in the workplace or misbehave.

3) Housing

The definition of housing discrimination includes the refusal to grant “reasonable accommodation in rules, policies, practices, or services, when such accommodations may be necessary to afford such person

equal opportunity to use and enjoy a dwelling.”⁴ Waiving a no-pet rule and/or pet deposit to allow a person with a disability to have the assistance of a service animal, or an emotional support animal, constitutes a reasonable accommodation. Courts have found that landlords must use “a flexible standard, based on the needs of the particular tenant” when responding to a request for a reasonable accommodation.⁵

Inquiries into the existence, nature, and extent of disabilities are prohibited when application is made for housing. However, an individual with a disability who requests a reasonable accommodation may be asked to provide documentation so that the landlord or homeowners’ association can properly review the accommodation request.⁶ They can ask a person to certify, in writing, (1) that the tenant or a member of his or her family is a person with a disability; (2) the need of the animal to assist the person with that specific disability; and (3) that the animal actually assists the person with a disability.⁷

4 42 U.S.C. § 3604(f)(3)(B).

5 See *Bronk v. Inichen*, 54 F.3d 425, 428-429 (7th Cir. 1995); *HUD v. Purkett*, FH-FL 19372 (HUDALJ July 31, 1990); *U.S. v. California Mobile Home Park Management Co.*, 29 F.3d 1413 (9th Cir. 1994).

6 *Hawn v. Shoreline Towers Phase 1 Condominium Association, Inc.*, 347 Fed. Appx. 464 (11th Cir. 2009).

7 See Federal Register, Vol. 73, No. 208, Pg. 63834 and United States. (2004). Reasonable Accommodations Under The Fair Housing Act: Joint Statement of The Department of Housing and Urban Development and Department of Justice. Washington, D.C: U.S. Department of Housing and Urban Development and U.S. Department of Justice [Electronic Version]. Retrieved 08/27/2010 from http://www.justice.gov/crt/housing/jointstatement_ra.php.

4) Education

Service animals in public schools (K-12) - Students who utilize service animals are generally allowed to have the animal with them while at school under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. The decision about whether and how the service animal accompanies the student rests with the Individual Education Plan (IEP) Team or the Individual Accommodation Plan (IAP) (Section 504) Committee.

An important factor in determining whether the service animal can stay with a student is the student's ability to handle and control the animal. This is not generally an issue in middle school or high school, but it is often an issue in elementary school. The school may require the child/handler to be in control of the animal at all times, and to be responsible for the animal's care and supervision. Students who utilize service animals are responsible for cleaning up after the animal.

Emotional support animals, therapy animals, and companion animals are seldom allowed to accompany students in public schools. This determination, however, should be made on a case-by-case basis by the IEP Team or the Section 504 Committee.

Service animals in post secondary education settings - Colleges and universities must allow people with disabilities to bring their service animals into all areas of the facility that are open to the public or to students.

Students who use a service animal may be required to contact the school's Disability Services Coordinator to register as a student with a disability. The Coordinator will evaluate the student's documentation of disability and discuss appropriate accommodations, including the assistance of a service animal. Higher education entities must not require any sort of documentation regarding the training or

certification of any service animal. They may require proof that the service animal is licensed and has required vaccinations in compliance with state or local laws that apply to all animals.

5) Transportation

A person traveling with a service animal cannot be denied access to transportation, even if there is a “no pets” policy. In addition, the person with a service animal cannot be forced to sit in a particular spot; no additional fees can be charged because the person uses a service animal; and the customer does not have to provide advance notice that s/he will be traveling with a service animal.

The laws apply to both public and private transportation providers and include subways, fixed route buses, Para transit, rail, light-rail, taxicabs, shuttles and limousine services.

6 Air Travel

Service and emotional support animals are both allowed on airplanes, however, individuals who travel with emotional support animals may have to provide much more documentation to establish that they have a disability and the reason the animal must travel with them.

For a service animal, air carriers should accept identifiers such as identification cards, written documentation, presence of harnesses, or tags. Credible verbal assurances of a qualified individual with a disability using the animal as evidence that an animal is a service animal should also be an accepted identifier. If airline personnel are uncertain that an animal is a service animal, they may ask one of the following:

What tasks or functions does your animal perform for you? or
What has your animal been trained to do for you? or

Would you describe how the animal performs this task for you?⁸

For emotional support and psychiatric service animals, airlines may require “Current documentation (not more than one year old) on letterhead from a licensed mental health professional stating (1) that the passenger has a mental health-related disability listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV); (2) that having the animal accompany the passenger is necessary to the passenger’s mental health or treatment; (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care; and (4) the date and type of the mental health professional’s license and the state or other jurisdiction in which it was issued.”⁹ This documentation may be required as a condition of permitting the animal to accompany the passenger in the cabin.

Animals such as miniature horses, pigs, and monkeys may be considered service animals. A carrier must determine whether there are any factors which preclude the animal from traveling in the cabin. Factors to consider are the animal’s size, weight, state and foreign country restrictions, and whether or not the animal would pose a direct threat to the health or safety of others, or cause a fundamental alteration in the cabin service.¹⁰

Airlines are not required to transport unusual animals such as snakes, other reptiles, ferrets, rodents, and spiders. Foreign carriers are not required to transport animals other than dogs.¹¹

8 Federal Register, Vol. 68, No. 90, Pg. 24875.

9 14 C.F.R. § 382.117(e)

10 14 C.F.R. § 382.117(f).

11 Id.

VI. Reaction/Response of Others

If employees, fellow travelers, or customers are afraid of service animals, a solution may be to allow enough space for that person to avoid getting close to the service animal.

Most allergies to animals are caused by direct contact with the animal. A separate space might be adequate to avoid allergic reactions.

If a person is allergic to an animal to the extent that it may pose a direct threat to their health and safety, then the business or government entity, must investigate ways to accommodate. Example, a separate space might be adequate to avoid allergic reactions.

VII. Service Animals in Training

1) Air Travel

The Air Carrier Access Act (ACAA) requires airlines to allow service animals and emotional support animals to accompany their handlers in the cabin of the aircraft, but airlines are not required otherwise to carry animals of any kind either in the cabin or in the cargo hold. Airlines are free to adopt any policy they choose regarding the carriage of pets and other animals (for example, search and rescue dogs) provided that they comply with other applicable requirements (for example, the Animal Welfare Act). Although “service animals in training” are not pets, the ACAA does not allow them in the cabin of the aircraft, because “in training” status indicates that they do not yet meet the legal definition of service animal. However, like pet policies, airline policies regarding service animals in training vary. Some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes. Trainers of service animals should consult with airlines and become familiar with their policies.

2) Employment

In the employment setting, employers may be obligated to permit employees to bring their “service animal in training” into the workplace as a reasonable accommodation, especially if the animal is being trained to assist the employee with work-related tasks. The untrained animal may be excluded, however, if it becomes a workplace disruption or causes an undue hardship in the workplace.

Several states have laws addressing service animals in training and when they should be allowed access.

VIII. Laws & Enforcement

1) Public Facilities and Accommodations

Title II of the ADA covers state and local government facilities, activities, and programs. Title III of the ADA covers places of public accommodations. Section 504 of the Rehabilitation Act covers federal government facilities, activities, and programs. It also covers the entities that receive federal funding.

Title II and Title III Complaints – These can be filed through private lawsuits in federal court or directed to the U.S. Department of Justice.

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section – NYAV
Washington, DC 20530
<http://www.justice.gov>
800-514-0301 (voice)
800-514-0383 (TTY)

Section 504 Complaints – These must be made to the specific federal agency that oversees the program or funding.

2) Employment

Title I of the ADA and Section 501 and Section 504 of the Rehabilitation Act prohibit discrimination in employment. The ADA covers private employers with 15 or more employees; Section 501 applies to federal agencies, and Section 504 applies to any program or entity receiving federal financial assistance.

ADA Complaints - Workers with disabilities must file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days of an alleged violation of the ADA. This deadline may be extended to 300 days if there is a state or local fair employment practices agency that also has jurisdiction over this matter.¹ Complaints may be filed in person, by mail, or by telephone by contacting the nearest EEOC office. This number is listed in most telephone directories under “U.S. Government.” For more information:

<http://www.eeoc.gov/contact/index.cfm>

800-669-4000 (voice)

800-669-6820 (TTY)

Section 501 Complaints - Federal employees must contact their agency’s Equal Employment Opportunity (EEO) officer within 45 days of an alleged Section 501 violation.

Section 504 Complaints – These must be filed with the federal agency that funded the employer.

3) Housing

The Fair Housing Act (FHA), as amended in 1988, applies to private housing. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in all housing programs and activities that are either conducted by the federal government or receive federal financial assistance. Title II of the ADA applies to housing provided by state or local governmental entities.

Complaints – Housing complaints may be filed with the

1 42 U.S.C. § 12117(a); 42 U.S.C. §2000e–5(e) (1).

Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity.

http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination

800-669-9777 (voice)

800-927-9275 (TTY)

4) Education

Students with disabilities in public schools (K-12) are covered by Title II of the ADA, Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA). Students with disabilities in post-secondary education are covered by Title II of the ADA and Section 504 of the Rehabilitation Act.

IDEA Complaints - Parents can request a due process hearing and a review from the state educational agency if applicable in that state. They also can appeal the state agency's decision to state or federal court. You may contact OSERS for further information or to provide your own thoughts and ideas on how they may better serve individuals with disabilities, their families and their communities. For more information contact:

Office of Special Education and Rehabilitative Services

U.S. Department of Education

400 Maryland Avenue, S.W

Washington, DC 20202-7100

202-245-7468 (voice)

Title II of the ADA and Section 504 Complaints - The Office for Civil Rights (OCR) in the Department of Education enforces the ADA and Section 504 as they apply to education. Those who have had access denied due to a service animal may file a complaint with OCR or file a private lawsuit in federal court. An

OCR complaint must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended for good cause. Prior to filing an OCR complaint against an institution, a potential complainant may want to find out about the institution's grievance process and use that process to have the complaint resolved. However, a complainant is not required by law to use the institutional grievance process before filing a complaint with OCR. If a complainant uses an institutional grievance process and then chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after the last act of the institutional grievance process. For more information contact:

U.S. Department of Education

Office for Civil Rights

400 Maryland Avenue, S.W.

Washington, DC 20202-1100

Customer Service: 800-421-3481 (voice)

877-521-2172 (TTY)

E-mail: OCR@ed.gov

<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>

5) Transportation

Title II of the ADA applies to public transportation while Title III of the ADA applies to transportation provided by private entities. Section 504 of the Rehabilitation Act applies to federal entities and recipients of federal funding that provide transportation.

Title II and Section 504 Complaints – These may be filed with the Federal Transit Administration's Office of Civil Rights. For more information, contact:

Director, FTA Office of Civil Rights
East Building – 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, DC 20590
FTA ADA Assistance Line: 1-888-446-4511 (Voice)
1-800-877-8339 (Federal Information Relay Service)
Web page: http://www.fta.dot.gov/civil_rights.html
Complaint form:
http://www.fta.dot.gov/civilrights/ada/civil_rights_3889.html

Title III Complaints – These may be filed with the Department of Justice.

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section – NYAV
Washington, DC 20530
<http://www.justice.gov/>
800-514-0301 (v)
800-514-03833 (TTY)

Note: A person does not have to file a complaint with the respective federal agency before filing a lawsuit in federal court.

6) Air Transportation

The Air Carrier Access Act (ACAA) covers airlines. The regulations were updated, effective May 13, 2009, and clarify what animals are considered service animals and delineate how each type of animal should be treated.

ACAA Complaints – These may be submitted to the Department of Transportation’s Aviation Consumer Protection Division. Air travelers who experience disability-related air travel service

problems may call the hotline at 1-800-778-4838 (voice) or 1-800-455-9880 (TTY) to obtain assistance. Air travelers who would like the Department of Transportation (DOT) to investigate a complaint about a disability issue must submit their complaint in writing or via e-mail to:

Aviation Consumer Protection Division
Attn: C-75-D
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

For additional information and questions about your rights under any of these laws, contact your regional ADA center at 1-800-949-4232 (voice/TTY).

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DBTAC Southwest ADA Center
2323 S. Shepherd – Suite 1000
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713.520.0232 (voice/TTY)
1.800.949.4232 (voice/TTY)
www.southwestada.org

The DBTAC Southwest ADA Center is part of a national network of ten regional DBTAC: ADA Centers that provide up-to-date information, referrals, resources, and training on the Americans with Disabilities Act (ADA). The centers serve a variety of audiences, including businesses, employers, government entities, and individuals with disabilities. The centers are funded by the National Institute on Disability and Rehabilitation Research under the U.S. Department of Education. Call 1-800-949-4232 v/tty to reach the center that serves your region or visit <http://www.adata.org>.

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