Service Animals and the ADA

Jason Burke
State ADA Coordinator
ADA Compliance Program
January 15, 2014
Disclaimer

The material presented during this ADA session is for informational purposes only. Neither the content nor the delivery of the content is or shall be deemed to be legal advice or legal opinion. The audience cannot rely on the content delivered as applicable to any circumstance or fact pattern. The information provided is not a substitute for professional legal advice, and is not binding on the ADA Compliance Program or the State of Alaska.
Overview

• Civics and civil rights

• Practical guidance under the ADA

• Alaska and other laws

• Resources

Image: http://www.vchca.org/animal-services/assistance-dogs
Civics

- Constitution
- Laws
- Regulations
- Standards
- Guidance
- Case law
- Codes
- Policy
- Practices
Equality

Fair
- Accessibility Standards
- Reasonable Accommodation
- Program Modification
- Effective Communication

Same
- Gender
- Race
- Religion
- Program Eligibility
Americans with Disabilities Act

Titles
I – Employment
II – State and Local Government
III – Public Accommodations
IV – Telecommunications
V – Miscellaneous provisions

The term “disability” is construed broadly.
It is illegal to discriminate against a qualified individual on the basis of disability who can perform the essential functions of a job, with or without reasonable accommodation.

who can participate in or receive benefits of programs, services, or activities with or without reasonable modifications.
Service Animals and the ADA

PRACTICAL GUIDANCE: ADA TITLE II AND TITLE III
ADA 2010 Regulation

§ 35.136 Service animals

(a) General. Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Potential for denial?
Talk with program lead or ADA Coordinator.
Definition under ADA titles II/III

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.
ADA Service Animal Highlights

• Only **dogs**.

• **Individually trained** to do work or tasks.

## Conditions and Related Tasks

<table>
<thead>
<tr>
<th>Condition</th>
<th>Work or Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical</td>
<td>Stability, balance, pull, retrieve</td>
</tr>
<tr>
<td>Sensory</td>
<td>Hear, alert, see, guide</td>
</tr>
<tr>
<td>Psychiatric</td>
<td>Calm, ground, remind</td>
</tr>
<tr>
<td>Intellectual</td>
<td>Remove from danger</td>
</tr>
<tr>
<td>Other Mental</td>
<td>Seizure altering</td>
</tr>
</tbody>
</table>
Title II and III Settings

- Sidewalks and thoroughfares
- Libraries
- Courthouses
- Government buildings
- Retail stores
- Restaurants
- Places of lodging
- Stadiums, Rec. Facilities
- Dormitories

Anywhere the public can go.

Allowable Inquiries

• If obvious, no questions allowed.
  – Refer to “individually trained” slide.
  – Certification not required.

• If unclear, provider may ask:
  – Is the dog required because of disability?
  – What tasks or work is it trained to perform?

Be careful not to ask about the nature or extent of a person’s disability.
Handler’s Control

A service animal must be harnessed, leashed, or tethered, unless these devices
• interfere with the animal’s work, or
• the person’s disability prevents use.

If not, the person must control the dog with voice, signal, or other effective controls.
Issues

• Allergies not valid excuse for denying access - Accommodate both people if possible.

• Remove from a facility only when
  – The handler does not take effective action to control a dog
  – The dog is not housebroken.

• If removed, Staff must offer the person an opportunity to obtain goods or services without the animal.
More Issues

• People with SAs cannot be isolated, treated differently, charged extra fees or charged like people with pets.

• Can charge for damages if normally would charge others for similar damages.

• Staff are not required to provide care or food for a service animal.
Certification under ADA

Under the ADA a service dog does not need to wear a vest or carry certification.

Certification is not required for service animals in training in Alaska.
Miniature Horse Modifications

• Must be individually trained for the person.

• Assess whether to modify policies to allow a miniature horse if:
  1. Housebroken.
  2. Under handler’s control.
  3. Can accommodate type, size, and weight.
  4. It will not compromise safety.

• Same requirements for service dogs apply.

Emotional v. Psychiatric

- Title II, III excludes animals that provide “emotional support, well-being, comfort, or companionship.”

- Title II, III includes service dogs that perform psychiatric tasks such as safety checks or room searches for persons with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations.

Image: http://theanimalrescuesite.greatergood.com/clickToGive/arspetition/VetServiceDogs
Not Service Animals under Title II, III

• Common Domestic

• Wild

Source: http://www.nea.org/grants/hes-a-cool-cat.html

Source: http://blogs.discovery.com/animal_oddities/2012/01/seizure-sensing-snake.html
Monkeys

• Certain monkeys “pose a direct threat; their behavior can be unpredictably aggressive and violent without notice or provocation.”

• “[C]apuchin monkeys are not suitable for use in public facilities.”
Service Animals and the ADA

ALASKA & OTHER LAWS
Alaska Human Rights Law (AS 18.80.200)

• “Physical or mental disability” protections under Alaska Human Rights Act are substantially similar to the ADA and other laws.
  – Nearly the same definition.
  – Applies same standards in most respects.
  – Follows the same basic rules.
  – May be more liberal in its interpretation.

• Allows governments to establish enforcement commissions with powers similar to that of Alaska State Commission for Human Rights, e.g., Anchorage Equal Rights Commission.
Service Animals in Training

Horse: http://www.eightandfive.com/
Service Dog: http://www.urbanvillagelegal.com/condo-association-ban-service-dog/
Alaska Statute Title 11, Chapter 76
Section 11.76.133

- Violation of criminal law to intentionally prevent or restrict an authorized trainer with a SA from a public facility.
  - Can ask for reasonable evidence of trainer’s authorization.
  - Trainer is liable for any property damage.
  - Animal can be removed for unruly or disruptive conduct, direct threat to others, or if it creates an unusually difficult atmosphere for regular activities.
Definitions under Sec. 11.76.133

- “authorized" means employed by, or serving as a volunteer with, a school, agency, or other facility that trains service animals;
- "identified as being in training" means wearing a device or exhibiting an insignia approved by a school, agency, or other facility that trains service animals that identifies the animal as being in training to be a service animal;
Definitions under Sec. 11.76.133

• “in training to be a service animal" means being in the pre-training or training period as required under a program ...

• "public facility“...is owned, operated, or occupied by, or a mode of transportation owned or operated by, the state, a public corporation of the state, the University of Alaska....
Alaska Statute Title 11, Chapter 76 Section 11.76.130

Criminal law that prohibits interference with rights of “physically or mentally challenged person” from using a “certified service animal” in

– Rights of way
– Common carriers
– Public accommodation

Person is liable for any property damage done by the animal.
Civil law that obligates drivers to take precautions to avoid injury to pedestrians with disabilities or their service animal.

Other Disability Rights Laws with Service Animal Provisions

• ADA Title I
• Fair Housing Act
• Air Carrier Access Act
• Individuals with Disabilities Education Act
• Rehabilitation Act
• U.S. Department of Transportation ADA Regulations
ADA Title I Employment

• A qualified employee can ask to use a service animal as a reasonable accommodation to perform the essential functions of a job, or to receive benefits of employment like similarly situated employees.
  – Interactive process might involve medical information.
  – Employer decides if person qualifies under the AD and whether the accommodation is reasonable.
Fair Housing Act

• Tenant can ask to use an assistance animal(s) as a reasonable accommodation in covered housing to have full use and enjoyment of the premises. May include “emotional support” animals.

• If the tenant’s animal does not meet the ADA service animal test, provider must evaluate using FHA guidance.
Air Carrier Access Act

• Permits dogs and other service animals to accompany a person with a disability on a flight.
  – Carriers may permit emotional support animal.
  – Accepts documentation, harnesses, markings, tags or credible verbal assurance.
  – Must keep aisle unobstructed.
  – Animal may be moved where space is available, and potentially to a cargo hold. A person may need to travel on a different flight.
Individuals with Disabilities Education Act (IDEA)

• Student with a disability may qualify under the ADA and/or IDEA.

• Individualized assessment required by the child’s education team. Factors may include:
  – Types of tasks and other means
  – Dog’s impact to help student function, behavior, social relationships
  – Effect of separation during school day.
ADA Requirements for Transportation

• Uses old, broad definition of service animal and the same two questions.
• ‘Service animals shall always be permitted to accompany their users in any private or public transportation vehicle or facility.’
• Identification of the role of the animal should be as brief as possible. Lengthy conversation should not happen in front of other passengers.
Service Animals and the ADA

RESOURCES

Image: http://www.disabilityrightsflorida.org/resources/disability_topic_info/service_animals
State ADA Coordinator's Office

Working to Make Alaska Modern and Accessible

The Americans with Disabilities Act (ADA) compliance program coordinates statewide implementation of disability rights laws to ensure people with disabilities have access to jobs and services within the executive branch of state government. Administrative Orders 262 and 129 establish the ADA compliance program and set the controlling policies in regard to disability issues.

Request Access or Reasonable Accommodation

- Employee
- Member of the Public

Resources

My Role Is

- Member of the Public
  - Get/learn about access
  - Get/learn about Reasonable Accommodation
  - File a complaint
- Employee or Supervisor
- Human Resources
- Service Provider
- Procurement
- Facilities
- ADA Coordinator
- Web, Content, or IT Professional

Hot Topics

- 2013 Web Access Workshop
- Ergonomics Job-Aid (PDF)
- News and Highlights
- Accommodation Resources
- Accessible Recreation Facilities
- Training
- Forms and Guidance
- Accessible Facilities

Contact Us

- State ADA Coordinator
- Department ADA Coordinators
### New on ADA.gov

- **Carmine’s Broadway Feast** | Complaint Consent Decree (posted 1/9/14)
- **Prakel v. State of Indiana** | PDF
  Statement of Interest (posted 1/7/14)
- **DOJ Findings Letter to Rhode Island**
  Olmstead Letter of Findings (posted 1/6/14)
- **ADA Mediation Program**
  Two New Publications: *Resolving ADA Complaints Through Mediation and Questions & Answers* (posted 1/3/14)
- **State of Alabama**
  Letter of Findings (posted 12/11/13)
- **Newseum, Inc.**
  Settlement Agreement (posted 12/6/13)
- **Camelot Child Development Center**
  Settlement Agreement (posted 11/27/13)
- **Phoenician Golf and Resort**
  Settlement Agreement (posted 11/26/13)

### Featured Topics

#### INTRODUCTION TO THE ADA

Publications and videos that answer these questions and more: What is the ADA? Who is a person with a disability? Who must comply with the ADA? Where can you call to ask questions about the ADA?

#### ADA REQUIREMENTS AND TECHNICAL ASSISTANCE

Regulations, design standards, publications, video, and other media that provide information about compliance with the ADA

#### ADA ENFORCEMENT ACTIVITIES

The Department enforces the ADA
FOR BUSINESS

This section provides assistance in examining your options for managing employees and serving customers with disabilities. The recent changes in the ADA regulations will extend coverage to more employees and enhance access to your place of business. Included here is assistance with employee productivity enhancements and reasonable accommodations, as well as tools to identify and remove access barriers in your business.

FOR STATE & LOCAL GOVERNMENT

This section is designed to help ADA Coordinators in state and local government entities to comply with the administrative requirements of the ADA, and to learn the new requirements of the recent regulatory changes to Title II of the ADA. Examples of best practices, as well as administrative tools for compliance and program access to local government services, can be accessed here.

FOR CONSUMERS

This section is intended to provide information and guidance for consumers with disabilities about the ADA. Included are topics designed to ensure equal opportunity in employment and equal access to goods and services. Provided is the most current information related to parking; service animals; education; accessible shopping, travel, and recreation; and, if necessary, the process for filing complaints.

Write your content here.

FOR ARCHITECTS & CONTRACTORS

Design professionals, code officials, contractors, members of the building trades and others will find basic and advanced information on accessibility requirements for the built environment, including the new 2010 ADA Standards for Accessible Design. There are practical tools for identifying barriers to accessibility and also comparisons of accessibility provisions in the ADA standards, guidelines and International Building Code.
Service Animals

- 2010 Revised ADA Requirements for Service Animals - DOJ Publication
- ADA Business Brief: Service Animals - DOJ Publication
- Commonly Asked Questions About Service Animals in Places of Business - U.S. DOJ Publication
- JAN's Accommodation and Compliance Series: Service Animals as Workplace Accommodations - JAN Publication
- Service Animal Related Job Accommodations - JAN Effective Accommodation Practices Series
- Service Animals and Allergies in the Workplace - JAN Consultants' Corner (Audio Version)
- Service Animals in the Workplace - JAN Consultants' Corner
- Service Dog (Assistant Dog) Laws - Service Dog Central Website
Other Supports

- Federal agencies – DOT, HUD/FHA
- Centers for Independent living
- Disability Service Providers
- State programs
Contact

Jason Burke
State ADA Coordinator
10th Floor State Office Building
Juneau, Alaska 99801
(907) 465-6929 (v/tty)
jason.burke@alaska.gov
www.Alaska.gov/ADA