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Government Issues New Regulations for Service Animals in Schools *Districts No Longer Liable for Injury or Damage*

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New federal regulations regarding the use of “service animals” in schools will go into effect on March 15, 2011. The new regulations set comprehensive guidelines for school districts to follow in dealing with the special circumstances of students requiring a service animal. The law affects not only students wishing to bring a service animal to school, but any disabled person desiring to bring an animal to a public school function.

These new regulations cover the definition of service animal, and the qualifications required for a disabled student, staff member or visitor to use service animals at schools. While the regulations exempt the school district from any damage, liability or responsibility for animal care, the new rules limit the school district’s authority and discretion in setting policies for service animals.

The new federal rules specify that only a miniature horse or dog is allowed as a service animal and that the animal must be “individually trained to do work or perform tasks for the benefit of an individual with a disability.” However the regulations do not stipulate any specific type of training and in fact prohibit the school district from requiring documentation that the horse or dog has been certified or licensed as a service animal.

The regulations also specify that the work or tasks that the animal performs for its owner must “directly relate” to the owner’s disability. This includes dogs used for physical, sensory, psychiatric, intellectual or other mental disabilities. For students with autism, there will still be some questions as to whether the dog is a “service animal” under the regulations. If the dog is used as a psychiatric service animal or sensory (to “ground” the student) it would qualify, but if it is an emotional support dog, it arguably does not. This determination will have to be made on a case-by-case basis, and consistent with the Individuals with Disabilities in Education Act and/or Section 504 of the Rehabilitation Act.

The new regulations charge the owner with all liability for any damage or injury as a result of the animal’s presence, as well as total responsibility for the animal’s behavior and care. The school district at its discretion may allow for some staff involvement with the care of the animal and determine district policy in that regard. The only circumstances under which the district can remove a service animal that are expressly mentioned in the regulations are when the owner cannot control the animal or when the animal is not housebroken. Allergies or fears experienced by other students are not expressly defined as grounds for disallowing the service animal. However, under general ADA standards, the animal still might be removed if the school district determines that the animal is a direct threat or its presence would fundamentally alter the nature of the school’s activity.

School districts are advised to put in place policies and procedures that comply with the new regulations. See 28 CFR 35.104; 28 CFR 35.136.