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Pacific ADA Center
1-800-949-4232 (Voice/TTY)
(510) 285-5600 (Voice/TTY)
adatech@adapacific.org
www.adapacific.org

Service Animals and Emotional Support Animals



2014



Service Animals and Emotional Support Animals

Where are they allowed and under what conditions?

Jacquie Brennan

Vinh Nguyen (Ed.)

Southwest ADA Center

A program of ILRU at TIRR Memorial Hermann

Foreword

This manual is dedicated to the memory of 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.

Pax guided his handler faithfully for over ten years. Together they negotiated countless busy intersections and safely traveled the streets of many cities, large and small. His skillful guiding kept his handler from injury on more than one occasion. He accompanied his handler to business meetings, restaurants, theaters, and social functions where he conducted himself as would any highly-trained guide dog. Pax was 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 worked as a team until Pax's retirement in January 2012, after a long and successful career. Pax retired with his handler's family, where he lived with two other dogs. His life was full of play, long naps, and recreational walks until his death in January 2014.

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 employment, public accommodations, transportation, and services that others take for granted.



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 laws govern the rights of a person requiring a service animal. These laws, as well as instructions on how to file a complaint, are listed in the last section of this publication. Many states 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. The document discusses service animals in a number of different settings as the rules and allowances related to access with service animals will vary according to the law applied and the setting.

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

A 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, among other things, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button.

Emotional support animals, 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 considered service animals either. The work or tasks performed by a service animal must be directly related to the individual'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 animals that fit the ADA's definition of "service animal" because they have been specifically trained to perform a task for the person with a disability:

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- Guide Dog or Seeing Eye® Dog¹ is a carefully trained dog that serves as a travel tool for persons who have severe visual impairments or are blind.
 - Hearing or Signal Dog is a dog that has been trained to alert a person who has a significant hearing loss or is deaf when a sound occurs, such as a knock on the door.
 - Psychiatric Service Dog is a dog that has been trained to perform tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects. Tasks 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.

Under Title II and III of the ADA, 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 or Therapy Animals

While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA. These support animals provide companionship, relieve loneliness, and sometimes help with depression,

anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities. Even though some states have laws defining therapy animals, these animals are not limited to working with people with disabilities and therefore are not covered by federal laws protecting the use of service animals. Therapy animals provide people with therapeutic contact, usually in a clinical setting, to improve their physical, social, emotional, and/or cognitive functioning.

IV. Handler's Responsibilities

The handler is responsible for the care and supervision of his or her service animal. If a service animal behaves in an unacceptable way and the person with a disability does not control the animal, a business or other entity does not have to allow the animal onto its premises. 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 repeatedly and disrupts another patron's enjoyment of a movie could be asked to leave the theater. Businesses, 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.

- The ADA requires the animal to be under the control of the handler. This can occur using a harness, leash, or other tether. However, in cases where either the handler is unable to hold a tether because of a disability or its use would interfere with the service animal's safe, effective performance of work or tasks, the service animal must be under the handler's control by some other means, such as voice control.²
- The animal must be housebroken.³
- The ADA does not require covered entities to provide for the care or supervision of a service animal, including cleaning up after the animal.
- The animal should be vaccinated in accordance with state and local laws.



- 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.

V. Handler's Rights

a) Public Facilities and Accommodations

Titles II and III of the ADA makes it clear that 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. Even if the business or 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. Only two questions may be asked:

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform?

These questions should not be asked, however, if the animal's service tasks are obvious. 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.⁴

A public accommodation or facility is not allowed to ask for documentation or proof that the animal has been certified, trained, or licensed as a service animal. Local laws that prohibit specific breeds of dogs do not apply to service animals.⁵

A place of public accommodation or public entity may not ask an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees. Entities cannot require anything of people with service animals that they do not require of individuals in general, with or 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.⁶

b) 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), which enforces the employment provisions of the ADA (Title I), does not have a specific regulation on service animals.⁷ 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, an employer may request documentation to establish the existence of a disability and how the animal helps the individual perform his or

her job.

Documentation might include a detailed description of how the animal would help the employee in performing job tasks and 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 either an undue hardship or a direct threat in the workplace.

c) Housing

The Fair Housing Act (FHA) protects a person with a disability from discrimination in obtaining housing. Under this law, a landlord or homeowner's association must provide reasonable accommodation to people with disabilities so that they have an equal opportunity to enjoy and use a dwelling.⁸ Emotional support animals that do not qualify as service animals under the ADA may nevertheless qualify as reasonable accommodations under the FHA.⁹ In cases when a person with a disability uses a service animal or an emotional support animal, a reasonable accommodation may include waiving a no-pet rule or a pet deposit.¹⁰ This animal is not considered a pet.

A landlord or homeowner's association may not ask a housing applicant about the existence, nature, and extent of his or her disability. However, an individual with a disability who requests a reasonable accommodation may be asked to provide documentation so that the landlord or homeowner's association can properly review the accommodation request.¹¹ 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 for the animal to assist the person with that specific disability; and (3) that the animal actually assists the person with a disability. It is important to keep in mind that the ADA may apply in the housing context as well, for example with student housing. Where the ADA applies, requiring documentation or certification would not be permitted with regard to an animal that qualifies as a "service animal."

d) Education

Service animals in public schools (K-12)¹³ – The ADA permits a student with a disability who uses a service animal to have the animal at school. In addition, the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act allow a student to use an animal that does not meet the ADA definition of a service animal if that student’s Individual Education Plan (IEP) or Section 504 team decides the animal is necessary for the student to receive a free and appropriate education. Where the ADA applies, however, schools should be mindful that the use of a service animal is a right that is not dependent upon the decision of an IEP or Section 504 team.¹⁴

Emotional support animals, therapy animals, and companion animals are seldom allowed to accompany students in public schools. Indeed, the ADA does not contemplate the use of animals other than those meeting the definition of “service animal.” Ultimately, the determination whether a student may utilize an animal other than a service animal should be made on a case-by-case basis by the IEP or Section 504 team.



Service animals in postsecondary education settings – Under the ADA, 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. Colleges and universities may have a policy asking students who use service

animals to contact the school’s Disability Services Coordinator to register as a student with a disability. Higher education institutions may not require any documentation about the training or certification of a service animal. They may, however, require proof that a service animal has any vaccinations required by state or local laws that apply to all animals.

e) 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, Paratransit, rail, light-rail, taxicabs, shuttles and limousine services.

f) 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.

Service animals – For evidence that an animal is a service animal, air carriers may ask to see identification cards, written documentation, presence of harnesses or tags, or ask for verbal assurances from the individual with a disability using the animal. If airline personnel are uncertain that an animal is a service animal, they may ask one of the following:

1. What tasks or functions does your animal perform for you?
2. What has your animal been trained to do for you?
3. Would you describe how the animal performs this task for you? ¹⁵

Emotional support and psychiatric service animals – Individuals who travel with emotional support animals or psychiatric service animals may need to provide specific documentation to establish that they have a disability and the reason the animal must travel with them. Individuals who wish to travel with their emotional support or psychiatric animals should contact the airline ahead

of time to find out what kind of documentation is required.

Examples of documentation that may be requested by the airline: Current documentation (not more than one year old) on letterhead from a licensed mental health professional stating (1) the passenger has a mental health-related disability listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV); (2) having the animal accompany the passenger is necessary to the passenger's mental health or treatment; (3) 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.¹⁶ This documentation may be required as a condition of permitting the animal to accompany the passenger in the cabin.

Other animals – According to the ACAA, 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).

Animals such as miniature horses, pigs, and monkeys may be considered service animals. A carrier must decide on a case-by-case basis according to factors such as the animal's size and weight; state and foreign country restrictions; 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.¹⁷ Individuals should contact the airlines ahead of travel to find out what is permitted.

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.¹⁸

VI. Reaction/Response of Others

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. 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 separated space might be adequate to avoid allergic reactions.

If a person is at risk of a significant allergic reaction to an animal, it is the responsibility of the business or government entity to find a way to accommodate both the individual using the service animal and the individual with the allergy.

VII. Service Animals in Training

a) Air Travel

The Air Carrier Access Act (ACAA) does not allow “service animals in training” 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.

b) 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.

c) Public Facilities and Accommodations

Title II and III of the ADA does not cover “service animals in training” but several states have laws when they should be allowed access.

VIII. Laws & Enforcement

a) 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
950 Pennsylvania Avenue, N.W.
Civil Rights Division
Disability Rights Section – NYA
Washington, DC 20530
<http://www.ada.gov>
800-514-0301 (v)
800-514-0383 (TTY)

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

b) Employment

Title I of the ADA and Section 501 and Section 504 of the Rehabilitation Act prohibits 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 - A person 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. 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.

c) Housing

The Fair Housing Act (FHA), as amended in 1988, applies to 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 government entities.

Complaints – Housing complaints may be filed with the Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity.

<http://www.hud.gov/fairhousing>

800-669-9777 (voice)
800-927-9275 (TTY)

d) Education

Students with disabilities in public schools (K-12) are covered by Individuals with Disabilities Education Act (IDEA), Title II of the ADA, and Section 504 of the Rehabilitation Act. Students with disabilities in public postsecondary education are covered by Title II and Section 504. Title III of the ADA applies to private schools (K-12 and post-secondary) that are not operated by religious entities. Private schools that receive federal funding are also covered by Section 504.

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 the Office of Special Education and Rehabilitative Services (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 Title II of 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. Before filing an OCR complaint against an institution, an individual may want to find out about the institution's grievance process and use that process to have the complaint resolved. However, an individual is not required by law to use the institutional grievance process before filing a complaint with OCR. If someone 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)
800-877-8339 (TTY)
[E-mail: OCR@ed.gov](mailto:OCR@ed.gov)
<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

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

U.S. Department of Justice
950 Pennsylvania Avenue, N.W.

Civil Rights Division
Disability Rights Section – NYA
Washington, DC 20530
<http://www.ada.gov/>
800-514-0301 (v)
800-514-0383 (TTY)

e) 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., S.E.
Washington, DC 20590
FTA ADA Assistance Line: 888-446-4511 (Voice)
800-877-8339 (Federal Information Relay Service)
http://www.fta.dot.gov/civil_rights.html
http://www.fta.dot.gov/12874_3889.html (Complaint Form)

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

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

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

f) Air Transportation

The Air Carrier Access Act (ACAA) covers airlines. Its regulations clarify what animals are considered service animals and explain how each type of animal should be treated.

ACAA complaints 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 800-778-4838 (voice) or 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, S.E.
Washington, DC 20590

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

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Southwest ADA Center at ILRU
TIRR Memorial Hermann Research Center
1333 Moursund St.
Houston, Texas 77030
713.520.0232 (voice/TTY)
800.949.4232 (voice/TTY)
<http://www.southwestada.org>

The Southwest ADA Center is a program of ILRU (Independent Living Research Utilization) at TIRR Memorial Hermann. The Southwest ADA Center is part of a national network of ten regional 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. 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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Principal Investigator: Lex Frieden

Project Director: Vinh Nguyen

Publication staff: Maria DelBosque, Marisa Demaya, and George Powers

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- [1] <http://www.seeingeye.org>
- [2] 28 C.F.R. 36.302(c)(4); 28 C.F.,R. § 35.136(d).
- [3] 28 C.F.R. 36.302(c)(2); 28 C.F.,R. §35.136(b)(2).
- [4] 28 C.F.R. 36.302(c)(6).
- [5] See 28 C.F.R. Pt. 35, App. A; Sak v. Aurelia, City of, C 11-4111-MWB (N.D. Iowa Dec. 28, 2011)
- [6] 28 C.F.R. 36.302(c)(8).
- [7] 29 C.F.R. Pt. 1630 App. 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."
- [8] 42 U.S.C. § 3604(f)(3)(B).
- [9] Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc., 3:09-cv-58 (D.N.D. Mar. 30, 2011): "... the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability."
- [10] See Bronk v. Ineichen, 54 F.3d 425, 428-429 (7th Cir. 1995); HUD v. Purkett, FH-FL 19372 (HUDALJ July 31, 1990) Green v. Housing Authority of Clackamas County, 994 F.Supp. 1253 (D. Ore. 1998).
- [11] Hawn v. Shoreline Towers Phase 1 Condominium Association, Inc., 347 Fed. Appx. 464 (11th Cir. 2009).
- [12] See "Pet Ownership for the Elderly and Persons with Disabilities", 73 Federal Register 208 (27 October 2008), pp. 63834-63838; 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 03/06/2014 from http://www.justice.gov/crt/about/hce/jointstatement_ra.php.
- [13] Private schools that are not operated by religious entities are considered public accommodations. Please refer to Section V(a).
- [14] Sullivan v. Vallejo City Unified Sch. Dist., 731 F. Supp. 947 (E.D. Cal. 1990).
- [15] "Guidance Concerning Service Animals in Air Transportation", 68 Federal Register 90 (9 May 2003), p. 24875.

[16] 14 C.F.R. § 382.117(e).

[17] 14 C.F.R. § 382.117(f).

[18] *Id.*