



BAY AREA REGIONAL OFFICE
1330 Broadway, Suite 500
Oakland, CA 94612
Tel: (510) 267-1200
TTY: (800) 719-5798
Toll Free: (800) 776-5746
Fax: (510) 267-1201
www.disabilityrightsca.org

California's protection and advocacy system

PSYCHIATRIC SERVICE AND EMOTIONAL SUPPORT ANIMALS

September 2009

This memo discusses the difference between psychiatric and emotional support animals and their treatment under the law in the context of housing and public accommodations.

A. Service Animals and Emotional Support Animals

1. *What is the difference between a "psychiatric service animal" and an "emotional support animal"?*

- a. Service Animals:

Under Federal law, "service animal" is defined as any "guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability." 28 C.F.R. § 36.104. Under state law, "service dog" means "any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items." Cal. Civ. Code § 54.1(b)(6)(C)(iii).

This definition includes services for people with physical, developmental or psychiatric disabilities, including autism, epilepsy, and mental illnesses. *See In re: Kenna Homes Co-op Corp.*, 557 S.E.2d 787, 795 n.7 (W. Va. 2001). An animal that is trained to perform tasks that benefit a person with psychiatric disabilities is a "psychiatric service animal."

- b. Emotional Support Animals:

Emotional support animals provide comfort to a person with a psychiatric disability, but are not necessarily trained to perform specific tasks to assist

them. See, e.g., *Auburn Woods / Homeowner's Ass'n v. Fair Employment and Housing Com'n*, 121 Cal. App. 4th 1578, 1595-96 (2004); *Janush v. Charities Housing Development Corp.*, 169 F. Supp. 2d 1133 (N.D. Cal. 2000). As discussed below, emotional support animals are not covered under laws that apply specifically to service animals, but may be allowed to accompany individuals in housing or public accommodations as "reasonable accommodations" for the individual's psychiatric disability. Emotional support animals are sometimes referred to by other terms, including "companion" or "therapy" animals.

2. *Does my service animal have to be officially licensed?*

The only requirement to be a service animal is that the animal be individually trained to benefit the person with a disability. See *Bronk v. Ineichin*, 54 F.3d 425, 430 (7th Cir. 1995). There is no requirement that an individual show that an animal has any special "certification" as a service animal. See U.S. Department of Justice (DOJ) *Commonly Asked Questions About Services Animals*, <http://www.ada.gov/qasrvc.htm> (last visited September 21, 2009). Therefore, a service animal may be trained by a non-certified professional, a friend, a family member, or the person with a disability. See *Bronk*, 54 F.3d at 430.

3. *What type of training is required for a psychiatric service animal?*

The law is not clear on this point. There must be some kind of connection between the person's psychiatric disability and the specific services provided by the animal. See, e.g., *Bronk*, 54 F.3d 425. However, there is no specific legal requirement as to the "amount or type of work a service animal must provide for the benefit of the disabled person." *Green v. Housing Auth. of Clackamas County*, 994 F. Supp. 1253, 1255 (D. Or. 1998).

Courts will often require proof that the animal can perform special tasks that directly serve the person's specific disability. See *In re: Kenna Homes Co-op Corp.*, 557 S.E.2d 787 (W. Va. 2001); *Prindable v. Assoc. of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245 (D. Haw. 2003). For example, according to one court, a dog with basic training that learned to put herself between an owner with anxiety and other people was

qualified to be a psychiatric service animal. *Storms v. Fred Meyer Stores, Inc.*, 120 P.3d 126 (Wash. Ct. App. 2005); *see also, Access Now, Inc. v. Town of Jasper*, 268 F. Supp. 2d 973, 980 (E.D. Tenn. 2003); *Bronk*, 54 F.3d at 430.

Some examples of tasks that psychiatric service animals perform include:

- Fetching medication to alleviate symptoms of a panic attack;
- Summoning help from a co-worker;
- Providing balance assistance to a person experiencing dizziness;
- Fetching an emergency phone during a psychiatric crisis;
- Alerting a person to take medication at a particular time;
- Helping a person to leave a public place during a panic attack;
- Calling 911 when a person is unresponsive or unconscious.

Joan Froling, *Service Dog Tasks for Psychiatric Disabilities*, http://www.iaadp.org/psd_tasks.html, (last visited September 21, 2009).

Under rules that are specific to airline travel, a psychiatric service animal does not have to have any particular training to accompany an individual with a disability on an airplane. However, the individual must have a note from a licensed mental health professional stating that the animal is a necessary support for the particular disability. 14 C.F.R. 382.117. *See also* Guidance Concerning Service Animals in Air Transportation, 68 Fed. Reg. 24875-02 (Dep't of Trans. 2003).

4. *What do I have to do to prove to that my animal qualifies as a psychiatric service animal?*

The law is not clear on this point, since different courts have required different types of proof to establish an animal is a service animal rather than an emotional support animal or a pet.

Some courts require only a doctor's note stating that a psychiatric service animal is necessary because of a person's disability. Others require an affidavit detailing training, veterinarian declarations, or certificates from licensed schools. For others, even evaluations of a psychiatrist, social worker, and mental health professional are not enough. Instead, the person must actually demonstrate what specific tasks an animal may

perform that directly address the person's disability. See *Storms v. Fred Meyer Stores, Inc.*, 120 P.3d 126 (Wash. Ct. App. 2005), *In Re Kenna Homes*, 557 S.E.2d 778, *Prindable*, 304 F. Supp. at 1257.

Since the law is still unclear, the more proof you have, the better off you will be.

B. Service Animals and Emotional Support Animals in Housing Areas

1. *If my housing complex has a "no-pets" policy, must my landlord or homeowners' association allow me to keep my psychiatric service animal in my house?*

Under the Fair Housing Act, landlords and homeowners' associations must make reasonable accommodations for people with disabilities, and an actual service animal is, by definition, a "reasonable" accommodation. *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995). A psychiatric service animal is legally no different from any other kind of service animal, and therefore, must be accommodated. See *Occupancy Requirements of Subsidized Multifamily Housing Programs*, U.S. Department of Housing and Urban Development (HUD) Handbook, No. 4350.3, 2-44 (2003).

2. *If my animal is an emotional support animal rather than a psychiatric service animal, under what circumstances may I be allowed to keep it in my house despite a "no pets" rule?*

Courts have required accommodations in the housing context for people with "companion animals," "emotional support animals," and "therapy animals." However, there must be a relationship between a person's disability, the person's ability to function, and the companionship of the animal. See e.g., *Auburn Woods I Homeowners' Ass'n v. Fair Employment and Housing Com'n*, 121 Cal. App. 4th 1578, 1595-96 (2004); *Janush v. Charities Housing Development Corp.*, 169 F. Supp. 2d 1133 (N.D. Cal. 2000).

HUD has issued regulations requiring accommodations for "support animals" and "therapy animals." Generally, the standards for these animals are lower than those for psychiatric service animals. In fact, "emotional

support” is enough to require accommodations if it is directly related to a person’s disability and affects a person’s ability to function or enjoy the use of the facilities. Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44 (2003); 42 U.S.C. § 3604(f)(3)(B).

However, HUD does not distinguish between psychiatric service and emotional support animals, and therefore some courts do not clearly distinguish between the two in the housing context. *See Prindable*, 304 F. Supp. 2d 1245. This leads to mixed, confusing signals about the requirements for an emotional support animal. At the very least, the support must relate to the disability. It is not clear, however, whether the animal must provide more emotional support than an average pet. *Contrast Auburn Woods*, 121 Cal. App. 4th at 1595 *with Prindable*, 304 F. Supp. 2d 1245.

C. Psychiatric Service Animals and Emotional Support Animals in Places of Public Accommodation

1. Where can I go with my psychiatric service animal?

Regulations from the DOJ require that all places of public accommodation and public transportation provide modifications in their policies to accommodate the use of service animals. 28 C.F.R. 34.202(c)(1). These regulations do not distinguish between service animals for physical and psychiatric disabilities.

Any “facility, operated by a private entity, whose operations affect commerce” must provide reasonable accommodations for a service animal. 28 C.F.R. § 36.104. This includes places of lodging, establishments serving food or drink, places of entertainment, places for public gathering, sales or rental establishments, professional offices, hospitals, offices of health care providers, stations used for public transportation, museums and libraries, zoos, parks, places of recreation, places of exercise, places of education, and social service establishments. *Id.*; 42 U.S.C. 12181(7). California state law provides an even broader definition, and requires accommodation at any place “to which the general public is invited.” Cal. Civ. Code § 54.1(a)(1). Furthermore, since the reasonable accommodations provision applies to public entities such as governments,

you should also be allowed to bring your service animal into government buildings. See *Green*, 994 F. Supp. 1253; *Cf. Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996).

A public accommodation cannot require a person with a disability to pay a deposit in order to be accompanied by his or her service animal, even if that is their policy for pets. DOJ, Title III Technical Assistance Manual (TAM), III-4.2300.

The law is not clear as to whether there must be a connection between the services provided by a service animal and the nature of the reasonable accommodation for that particular disability. For example, if an animal is trained only to fetch medication or phones at home, and the animal does not provide any benefit in a store, the law is not clear whether the store has to let the animal in. The general law allows public accommodations to refuse to make “reasonable modifications in policies” (including no pets policies), if they can show that making such modifications would “fundamentally alter the nature of such goods, services, privileges, advantages, or accommodations.” 42 U.S.C. 12182(b)(1)(A)(ii). Each determination must be addressed according to its individual facts, based on this standard.

2. *Can I take an emotional support animal to the same places that I could take a psychiatric service animal?*

There are fewer protections for emotional support animals than there are for psychiatric service animals in the context of access to public accommodations. In fact, the DOJ has stated that its official regulations provide protection for service animals and *not* for emotional support animals. 73 Fed. Reg. 34473 (June 17, 2008). However, as discussed above with regard to housing, the question of whether support animals must be allowed as reasonable accommodations is determined on an individual basis. 42 U.S.C. 12182(b)(2)(A)(ii).

Federal regulations related to air travel require that emotional support animals be reasonably accommodated on all flights. The passenger must provide the airline with a note, less than one year old, signed by a licensed mental health professional, stating that he or she has a recognized psychiatric disability that requires an emotional support animal. 14 C.F.R.

382.117. Exotic animals, such as snakes or spiders, do not have to be accommodated at all. *Id.*

3. *When I go out into public, what can I be asked about my disability and/or my animal?*

According to the DOJ, no one can ask about an individual's specific disability, or ask for specific identification cards, to determine whether an animal should be admitted to a public accommodation. Most importantly, no one can ever deny entry to a person for not providing specific ID or proof of training. However, a public accommodation *may* ask if an animal is a service animal or ask what tasks the animal has been trained to perform. See DOJ, ADA Brief: Service Animals.

<http://www.usdoj.gov/crt/ada/svcanimb.htm> (last visited September 21, 2009).

Again, air travel is an exception. Even for a psychiatric service animal, a person may be required to provide written evidence from a licensed mental health professional that stating that the animal provides support for a person's professionally-recognized disability. 14 C.F.R. 382.117.

4. *Who is responsible for the supervision of a psychiatric service animal or emotional support animal that is in a public location?*

The care and supervision of a service animal are the responsibility of his or her owner, not the public accommodation. 28 C.F.R. 36.302(c)(2).

Accordingly, a person with a disability can be asked to remove his or her service animal from the premises if: "(1) the animal is out of control and the animal's owner does not take effective action to control it (for example, a dog that barks repeatedly during a movie) or (2) the animal poses a direct threat to the health or safety of others." Businesses generally may not deny access or refuse service because of allergies or fear of animals. DOJ, ADA Brief, *supra*.

If a place of public accommodation normally charges its guests for damage caused to the premises, it may charge the owner of a service animal if the animal causes damage. *Id.*

Since, as discussed above, emotional support animals are provided with fewer legal protections than psychiatric service animals, it is reasonable to conclude that owners are responsible for their care and supervision as well.

This is particularly likely since the U.S. Department of Transportation regulations for airlines (whose fuzzy definition for “service animals” includes some emotional support animals) specify that for air travel, the case of “service animals” (the definition of which includes some emotional support animals, see ¶3, above) is “solely the responsibility of the passenger with a disability whom the animal is accompanying.” Guidance Concerning Service Animals in Air Transportation, 68 Fed. Reg. 24875-02 (Dep’t of Trans. 2003).