



## Service Animal Regulation

### Procedures for Evaluation of Requests

These procedures must be followed when an individual with a disability is using an animal in San Francisco Community College District facilities or on District Campuses, or when an individual with a disability proposes to use an animal, and the District has questions or concerns about permitting the presence of the animal.

#### General Information:

Generally, there is a presumption that use of service animals by persons with disabilities must be allowed in District facilities and on District campuses. Therefore, the District cannot exclude them except in certain circumstances. Of course, the animal must meet the ADA definition and not pose a direct threat to the health or safety of others or cause a fundamental alteration in District services, programs or activities.

OCR advises caution in making an absolute requirement that all persons using service animals always obtain prior permission from the District. For example, this is not always feasible when use of a service animal is obviously related to a disability and meets the legal definition, or is being used by a visitor for a one-time event, or when an employee or student uses a service animal on an occasional basis. A blanket requirement that prior permission be obtained could result in an unjustifiable denial of access.

When circumstances arise which would justify evaluating a person's use of a service animal, it is important that any District personnel involved in this process use the correct standards. Since the student, employee or visitor provides the animal him/herself, it's somewhat different than evaluating an employee's request for an accommodation or a student's request for an academic adjustment. It's important to make sure that if this is done through District's existing employee and student procedures, that the proper criteria are used.

The basic criteria would be:

- the person using the service animal has a disability;
- the service animal assists the person in a manner related to the disability;
- there is no fundamental alteration;

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- there is no direct threat.

1) What is the particular question or concern with the service animal?

a. The service animal does not meet the basic standards of the ADA.

Procedure: If, and only if, circumstances arise which would justify evaluating a person's use of a service animal (i.e., the use of the animal is not occasional or is not obviously related to a user's disability), establish whether the particular service animal meets the basic definition of the ADA as quoted in the District regulation. This determination is based upon whether the service animal has been trained to provide the specific task or service required by the individual because of his/her disabilities and whether the animal can actually provide that task or service.

The focus is on determining if the service animal can demonstrate the ability to perform the tasks or services needed by the individual. If the animal cannot perform the identified tasks or services, the District may exclude the animal because it has a policy that excludes such animals (District Regulation AR 7.13.02 X). However, first consider whether the use of the animal would be a reasonable accommodation for the individual with a disability.

Comment: This part of the procedure establishes the qualifications of the particular service animal to assist the individual. Certification of formal training cannot be required, but requests for proof of immunizations are permissible. If proof of immunizations is requested at this stage, apply the request uniformly to limit appearances of disparate treatment.

If the definition of a service animal (per District Regulation AR 7.13.02 X) is met, animals are considered service animals under the ADA, regardless of whether they have been licensed or certified by a state or local government, or a private agency.

If the definition of a service animal is not met, then the use of the animal (i.e., comfort animal) may be allowed as a reasonable accommodation through established DSPS or Title 5/EEO/ADA Compliance Office (for employees) procedures.

Title II of the ADA requires a public entity to make reasonable modifications in its policies, practices, or procedures so that individuals with disabilities are not discriminated against. [28 C.F.R. 35.130 (b) (7)]. Therefore, District policies, practices, or procedures must be modified to permit the use of a service animal by an individual with a disability. The care and supervision of a service animal, however, is the responsibility of the individual with a disability using the animal's services.

b. Use of the service animal or other authorized animal will result in a “fundamental alteration.”

Procedure: Establish whether permitting the use of the particular service animal will fundamentally alter District services, programs, or activities. If the District determines that the use of the service animal does cause a fundamental alteration in District services, programs, or activities, the District may exclude the animal.

Comments: Please note that the use of this particular standard is generally limited. Prior to establishing a determination of fundamental alteration, the District must rigorously analyze whether the presence of the service animal would actually have a significant effect upon the service, program, or activity involved.

Background Information: Fundamental alteration is referred to in the Title II ADA regulation [28 C.F.R. 35.130 (b) (7)], as follows:

A Public entity shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

c. Use of the service animal or other authorized animal will result in a “direct threat.”

Procedure: Establish whether the presence of a particular service animal poses a direct threat to the health or safety of other persons who participate in District services, programs, or activities. If the District determines that the presence of the service animal does pose a direct threat to the health or safety of persons participating in District services, programs, or activities, the District may exclude the animal.

Comment: Note that this does not establish a hierarchy of disabilities. For example, the “direct threat” prong may not be used to remove a service animal from a classroom where another student has an allergy to that animal. Instead, the District would use its regular procedure for identifying an accommodation or modification for both students; perhaps, for example, assigning the students to different sections of the same class.

Background Information: The definition and parameters of “direct threat” is discussed in the Title III ADA regulations (28 C.F.R. 36.208), as follows:

(a) This part does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others.

(b) Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

2. What alternatives can be provided if use of the service animal or other authorized animal is denied?

If the District determines that the use of a particular service animal will not be permitted, the District will take the following steps to ensure that the individual with disabilities is not discriminated against on the basis of disability.

- a. Establish whether alternative modifications to District policies, practices, or procedures can be made to permit the individual to participate in District services, programs, or activities.
- b. Establish whether academic adjustments or auxiliary aids are necessary for a student with a disability to ensure that the student is not excluded from participation in District services, programs, or activities; or denied the benefits of District services, programs, or activities.