

Did the DOJ overstep its boundaries?

Service Animals in Schools

Presented by:
Marylin Batista-McNamara
Deputy General Counsel
Barbara J. Myrick
Assistant General Counsel
The School Board of Broward County, Florida
Office of the General Counsel

[OVERVIEW]

- Effective March 15, 2011, the Department of Justice (DOJ) issued regulations stating that public entities (including schools) must modify their policies to allow the use of service animals by people with disabilities under Title II of the Americans With Disabilities Act (ADA).
- Districts must already provide a free appropriate public education (FAPE) to students with disabilities. To be appropriate, education programs for students with disabilities must be designed to meet the individual needs of disabled students to the same extent that the needs of nondisabled students are met through regular or special education and related aids and services.
- Must districts allow service animals when they are not necessary to provide (FAPE)?
- May districts engage in the interactive process under the ADA to determine if a service animal is a reasonable accommodation?

[SECTION 504]

Qualified individuals are protected from being
“...excluded from participation in, [...] denied
benefits of, or subjected to discrimination...”
based solely on the individual’s disability.



[

SECTION 504

]

- School Districts are required to provide educational programs and activities to students with disabilities as they would for non-disabled students.
- **Section 504 is silent regarding the use of a service animal as an accommodation.**



[

ADA

]

- Prohibits discrimination against persons with disabilities in:

Employment (Title I)



Public Entities, programs (Title II)

Public Accommodations (Title III)

ADA



- School Districts are public entities by definition and therefore fall under Title II.
- Prior to the ADA Amendments in 2011, Title II was silent regarding service animals; however Title III has **included service animals** in its regulations previously.

TITLE II and SERVICE ANIMALS

- Requires public entities to modify policies **to permit** service animals.
- Specifies that public entities are *not* responsible for **care or supervision** of the service animal.

[TITLE II and SERVICE ANIMALS]

- Do the regulations allow for a school district to apply the reasonable accommodation analysis when considering the use of a service animal, after the regulations have stated a school district **must** modify policies to permit the use of the animal?



TITLE II and SERVICE ANIMALS

- Broward argues this mandate exceeds the scope of DOJ's authority and is inconsistent with the ADA



VS.



CARE & SUPERVISION of SERVICE ANIMALS

ADA has no definition of the meaning of care and supervision, except to say the service animal must be under the control of the handler.



[

THE CASE - Alboniga

]

- Filed in the Southern District of Florida.
- After the District had allowed the service animal from the first day of school in the 2013/14 school year and was providing a “handler” while still maintaining legally not required.

THE CASE - Alboniga

- The two-count Complaint alleged violations of Title II of the ADA and Section 504 by initially denying the service animal access to school, failing to provide a handler, and a policy requiring vaccines and liability insurance.
- Complaint sought declaratory, injunctive relief; compensatory damages; attorney fees and costs.

[THE CASE - Alboniga]

- A.M. is a student with multiple disabilities, who is non-verbal, visually impaired and needs assistance with all daily activities.
- A.M. is unable to care for himself.
- Requires a service dog to alert and assist when A.M. is having a seizure.

THE CASE - Alboniga

- Nine months after filing the case, the case was transferred to a new District Judge who had been on the bench one month.
- DOJ submitted a Statement of Interest.
- Judge entered the Final Order within 2 months of receiving the case and 15 days after Statement of Interest.



[

THE RULING - Alboniga

]

- Student was capable of being the service dog's handler.
- School District is required to assist student by taking dog out to relieve himself.
- In other words, not handling the dog, accommodating the student.

[

THE RULING - Alboniga

]

- A.M. did not have to exhaust IDEA's administrative remedies.

[DOJ EXCEEDED AUTHORITY]

- DOJ's regulations **require** public entities, school districts, to make *reasonable modifications* to policies to avoid discrimination, unless it fundamentally alters the program.
- However, in essence, the regulations prohibit a District from making a reasonable accommodation analysis (to allow services animals unless it is a fundamental alteration). This is contrary to other provisions of ADA, 504 and IDEA, which require Districts to provide reasonable accommodations.

[ANIMAL HANDLER]

- Service animal must be under control of animal handler; District not responsible for care and supervision.
- Plain and unambiguous language states it is not a school district's responsibility to be an animal handler and/or to care for service animal.
- The accommodation becomes an accommodation to the student to handle the animal.

CASE AFTER ALBONIGA

Scenario # 1

- Student with severe mobility issues, and no cognitive impairments, requested service animal.
- IEP team met and determined that the service animal was not necessary to provide FAPE.
- Plaintiff brought case pursuant to Section 504 and Title II of the ADA seeking damages. Plaintiffs **did not** challenge the efficacy of the IEP.
- School staff testified that IEP would have to be changed to accommodate concerns of allergic students.

CASE AFTER ALBONIGA

■ Court's Decision:

Exhaustion of administrative remedies is required because having the dog at the school . . . is “reasonably related” to the student’s disability only because the dog “enhances educational opportunities.”

Fry v. Napoleon Community Schools, 788 F.3d 622 (6th Cir. 2015)

[

DOJ vs. District

]

- DOJ files lawsuit against School District in New York alleging violation of Title II of the ADA.
- The student needs assistance tethering the dog and issuing verbal commands.

The United States of America v. Gates-Chili Central School District, filed September 29, 2015.

[LESSONS LEARNED]

- Exhaustion of administrative remedies
- Balancing needs of all students and educational program
- Care and supervision of the service animal vs. accommodating the student
- DOJ exceeding authority in promulgation of Title II regulations

[

QUESTIONS?

]



Marylin Batista-McNamara

marylin.batista@browardschools.com

Barbara Myrick

barbara.myrick@browardschools.com