

**GUIDELINES  
FOR  
SCHOOL DIVISION POLICY AND PROCEDURES  
REGARDING  
SERVICE ANIMALS IN VIRGINIA'S PUBLIC SCHOOLS  
REVISED 2011**



Division of Special Education and Student Services

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Virginia Department of Education Division of Special Education and Student Services

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## INTRODUCTION

In 2008, the *Virginians with Disabilities Act*, at § 51.5-44 which governs what is known as the service dog's right of access, was amended to expand to include public schools in the group of public entities that must meet the requirements of this statute.<sup>1</sup>

At that time, the Virginia Department of Education (VDOE) reviewed those amendments, as well as the then existing requirements of the *Individuals with Disabilities Education Act*, the *Rehabilitation Act of 1973, as amended*, the *Americans with Disabilities Act*, the *Virginians with Disabilities Act*, and documents from the Assistance Dogs International, Inc. We reviewed these requirements with our department's legal counsel. As a result, we concluded that the *Code of Virginia*, § 51.5-44 afforded each student a near absolute right to be accompanied by a service dog in a Virginia public school. We also developed, disseminated, and posted to our agency's Web site *Guidelines for School Division Policy Regarding Service Dogs in Virginia's Public Schools*, 2008.

New federal regulations implementing the *Americans with Disabilities Act*<sup>2</sup> go into effect on March 15, 2011.<sup>3</sup> These regulations do nothing to change the mandate of the 2008 amendments to the *Virginians with Disabilities Act*. To the extent there was previously any question regarding the species of animals that are entitled to public access while serving an individual with a disability, the amended federal regulations resolve that question: a "service animal" can only be a dog, or a trained miniature horse.

The guidance provided by the Department of Justice is useful, however, in considering issues related to service animal access.<sup>4</sup> For this reason, we have revised the Guidelines we previously issued in 2008 to reflect the recent changes to the federal regulations.

VDOE reiterates that while the student's right to be accompanied by a service animal in school is nearly absolute, it still must be qualified and carefully weighed against the rights of other students who are equally entitled to receive educational benefits at the school. Furthermore, the right of the student to be accompanied by a service dog (or trained miniature horse) must also be weighed against the school division's ongoing legal responsibility to operate, maintain, and supervise Virginia's public schools. (*The Constitution of Virginia*, Art. VIII, Section 7).

Until recently, we generally considered the use of service dogs in relation to children with disabilities. Inclusion of the service dog in the child's educational environment was

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<sup>1</sup> While the amendments apply to students, school employees, and school visitors, the focus of these guidelines is students in Virginia's public schools, K-12.

<sup>2</sup> Americans with Disability Act – Amendments Act of 2008 (ADAAA 2008), effective January 1, 2009.

<sup>3</sup> 28 Code of Federal Regulations, Parts 35 and 36. <http://www.ada.gov/regs2010/ADAregs2010.htm>

<sup>4</sup> See FTN 3 for Web site information.

determined as an accommodation or related service by the child's IEP or 504 team. The 2008 amendments to the Virginians with Disabilities Act, in the context noted above, provide a separate statutory right of the student to be accompanied by a service dog, thereby making IEP/504 team determinations unnecessary. When requested for educational reasons, inclusion of the service animal in the school environment is certainly an appropriate matter for the student's IEP or Section 504 team to determine. When requested for non-educational reasons, the service animal in the school environment is determined by the school division's administrators based on the school division's policy and procedures.

The *Virginians with Disabilities Act* applies only to dogs. Nonetheless, if a request for access involves a trained miniature horse, the same standards as those applied to service dogs can be applied in terms of requiring the animal to be healthy, housebroken and trained. In short, the concerns of the school administration apply equally regardless of whether the service animal is canine or equine.<sup>5</sup>

School personnel should consult with their school board attorney on the development of the school division's policy and procedures on this issue, as well as its application in individual cases that raise concern. Questions related to this document may be made to staff in VDOE's Office of Dispute Resolution and Administrative Services by calling (804) 225-2013.

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<sup>5</sup> The Department of Justice's commentary regarding the use of trained miniature horses can be found at *Federal Register*, Vol. 75, No. 178, page 56198 et seq, and includes additional guidelines for determining whether to allow a miniature horse into a specific facility.

# PROPOSED POLICY GUIDELINES

## A. GENERAL FRAMEWORK

### “General Statement”

We recommend that the school division’s policy include a statement that the document applies the legal standards as set forth in the:

- *Code of Virginia*, § 51.5-44
- *Individuals with Disabilities Education Act*; implementing regulations at 34 CFR Part 300
- *The Rehabilitation Act of 1973, as amended*
- *Americans with Disabilities Act- Amendments Act of 2008*; implementing regulations at 28 CFR Parts 35 and 36
- *Virginians with Disabilities Act*

We recommend that the document’s opening statement emphasize that the basic thrust of the policy is that any animal (pet or service animal) is personal property and cannot be brought onto school property without prior approval. If the child arrives at school with an animal and previous approval has not been obtained, then the parents/guardians will be immediately notified and requested to come to the school to retrieve the animal until it can be determined that the presence of the dog or trained miniature horse in school is in compliance with the law. The animal will remain with the child until the parent/guardian removes the animal from school property. The animal will not be “confiscated” and taken away from the child.

### “Definitions”

[see the Code of Virginia, at § 51.5-44; 28 CFR §§ 35.104; 36.104]

We recommend that the policy include at minimum the following definitions:

“Hearing dog” means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond.

“Mobility impaired” student means one who is unable to move about without the aid of crutches, a wheelchair or any other form of support or because of limited functional ability to ambulate, climb, descend, sit, rise or perform any related function.

“Service animal” means any dog (or trained miniature horse) 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.

“Three-unit service dog team” means a team consisting of a trained service dog, a disabled person, and a person who is an adult and who has been trained to handle the service dog.

“Work or tasks” performed by a service animal must be directly related to the handler’s disability. Examples include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

### **“No Pets Allowed In School”**

Service animals are not pets, thus a “no pet” policy cannot be applied to a service animal. School policy likely already restricts certain personal property from being brought onto school grounds, for example, toys, sharp objects, weapons. We recommend that the policy set forth the reasons for the prohibition regarding pets.

Sample language:

We are dedicated to protecting the health and well-being of our community. Some students are highly allergic to certain animals. Animals can also spread disease, or behave in dangerous or unpredictable ways that can cause injury to persons with whom they come into contact. Please help us maintain a safe environment for all students by respecting these policies.

### **“Service Animal Exception”**

By framing the service animal policy as an exception to the prohibition on animals, it is set apart from the “No Pets” policy provision. It is important to note that under no set of circumstances does having a service animal give the service animal’s handler a “free pass” to access a place to which s/he would not otherwise be allowed to access without the service animal by merely claiming the animal as a “service animal.”

We recommend that the policy set forth the reasons for the exception:

Sample Language:

We do not discriminate on the basis of disability. Persons with disabilities have the same right as the able-bodied to the use and enjoyment of our school. We strive to make reasonable accommodations for a disabled person’s use of a service animal on school property. We have established the following procedures for evaluating whether and how a request to bring a service animal on school property can be implemented under the circumstances on a case-by-case basis.

<b>“Provisions if the service dog is in training”</b>
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We recommend that the policy include a provision if the service dog is in training. The provision should recognize that the individual may be an experienced trainer or if the dog has completed initial training, an individual who is conducting continuing training. The provision should address the required qualifications of the individual as found in § 51.5-44 E.

**“Trained Miniature Horses”**

Similar to dogs, miniature horses can be trained as service animals. Miniature horses are not one specific breed, and are different from ponies and full-size horses. A miniature horse is generally 24-34 inches in height (measured to the withers or shoulders) and generally weighs between 70-100 pounds. Given, the size of certain large breed dogs, a miniature horse can be particularly effective as a service animal for large stature individuals. In addition to the considerations of training, health and safety, we recommend the policy include a statement that additional assessment factors will be taken into account in determining whether to allow a trained miniature horse into a specific school setting.

The ADA 2008 regulations state that consideration must be given to:

- the type, size and weight of the horse and whether the facility can accommodate those features;
- whether the handler has sufficient control of the horse;
- whether the horse is housebroken; and
- whether the horse’s presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(28 CFR §35.136(i)(2))

**B. FACTORS TO CONSIDER  
IN DEVELOPING LOCAL POLICY AND PROCEDURES  
REGARDING SERVICE ANIMALS**

(1) Training

- By definition, the service animal must be trained. (for service dogs, see § 51.5-44 E of the Code of Virginia, and 28 CFR §§ 35.104; 36.104; for trained miniature horses, see 28 CFR §§ 35.104; 36.104).
  - The ADA regulations are clear that a service animal must be under the control of its handler. It must have a harness, leash, or other tether, unless the handler is unable because of a disability to use a harness, leash, or other tether or the use of such would interfere with the service animal’s safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler’s control (e.g., voice control, signals, or other effective means). (28 CFR § 35.136(d)).

- ▶ The school division is not responsible for the care or supervision of the service animal. (28 CFR § 35.136(c))
- ▶ The school division may request removal of the service animal if the animal is out of control and the animal’s handler does not take effective action to control it, or the animal is not housebroken. (28 CFR § 35.136(b))<sup>6</sup> Factors that may be considered under this element are that the service animal:
  - ✓ is clean, well-groomed and does not have an offensive odor.
  - ✓ does not urinate or defecate in inappropriate locations.
  - ✓ does not solicit attention, visit or annoy any students or school personnel.
  - ✓ does not vocalize unnecessarily; i.e., barking, growling, or whining.
  - ✓ shows no aggression towards people or other animals.
  - ✓ does not solicit or steal food or other items from the students or school personnel.
  - ✓ must not interfere with the educational program of any student.
- Through the ADA regulations, the U.S. Department of Justice, however, takes the position that a public entity, which includes a school division, may not require proof of service animal certification or licensing because this would “increase the expense of acquiring a service animal and might limit access to service animals for individuals with limited financial resources.” (*Federal Register*, Vol. 75, No. 178, p. 56198). Specifically, the regulations state:
 

A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., 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). 28 CFR § 35.136(f)
- The ADA regulations clarify that service animals that are not trained to perform tasks that mitigate the effects of a disability, including animals that are used purely for emotional support, are not service animals. Individuals with mental disabilities who use service animals that are trained to perform a specific task are protected under these regulations; for example, preventing or interrupting impulsive or destructive behaviors. (28 CFR §36.104)

Some elements to consider, for example, using the service dog as a framework:

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<sup>6</sup> If the service animal is properly excluded from the school environment, the school division must give the student with a disability the opportunity to participate in the student’s educational program without having the service animal. (28 CFR § 35.136(c)).

A “trained service dog” can be called a:	A “trained service dog” is NOT called a:
<ul style="list-style-type: none"> <li>• hearing dog</li> <li>• guide dog</li> <li>• assistance dog</li> <li>• seizure alert dog</li> <li>• mobility dog</li> <li>• psychiatric service dog</li> <li>• autism service dog</li> </ul>	<ul style="list-style-type: none"> <li>• skilled companion animal</li> <li>• therapy dog</li> <li>• social dog</li> <li>• facility dog</li> <li>• agility dog</li> <li>• police dog</li> <li>• search and rescue dog</li> <li>• helping dog</li> <li>• support dog</li> </ul>

Examples of work or tasks a “trained service dog” performs for a disabled person:	A “service dog” can be denied access if it:
<ul style="list-style-type: none"> <li>• hearing</li> <li>• guiding</li> <li>• retrieving objects</li> <li>• carrying objects</li> <li>• pulling a wheelchair</li> <li>• opening doors</li> <li>• seizure alert</li> <li>• allergen alert</li> <li>• diabetes alert</li> <li>• balance or mobility assistance</li> <li>• preventing or interrupting destructive or impulsive behavior</li> </ul>	<ul style="list-style-type: none"> <li>• is out of control and the animal’s handler does not take effective action to control it</li> <li>• the animal is not on a harness, leash or other tether, or otherwise under the voice control of the handler</li> <li>• the animal is not housebroken</li> </ul>

(2) Health Certificate. The *Regulations Establishing Standards for Accrediting Public Schools in Virginia*, require school administrators to maintain safe and clean environments for all students. (See 8 VAC 20-131-260 A.1: “...the school administration shall...maintain a physical plant that is accessible, barrier free, safe, and clean.”) For this reason, it is understandable that school personnel will request some documentation evidencing that the service animal is currently in good health, free from parasites, and has received all recommended vaccinations. This is to ensure that the service animal does not pose a health or safety threat to any student, personnel, or other persons.<sup>7</sup>

(3) Identifiers for Service Dogs. The Code of Virginia, at § 51.5-44 E requires the following identifiers for service dogs:

- for students with disabilities with visual impairment, including blindness: a harness.
- for students with disabilities with deafness or hearing impairment: a blaze orange leash.

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<sup>7</sup> See FTN 6.



- for students with disabilities with mobility impairment: harness, backpack, or vest identifying the dog as a trained dog.

(4) Administrative Considerations:

- The school division's policy and procedures should designate a school administrator contact person for processing requests related to service animals.
- The school division's policy and procedures should include an appeal mechanism when requests for the service animal are denied.

(5) Additional Considerations: School personnel may wish to consider the following elements related to service animals in educational environments:

- a rest place for the service animal.
- rest times for the service animal (gym, lunch and recess are especially difficult school periods for a service animal to successfully endure).
- emergency evacuation plan.
- fire drill plan/participation.
- pre-treating the school facility on a regular basis to reduce animal-borne allergens.
- an alternate accommodation/plan in the event the service animal's primary handler (if not the child) or the service animal is not able to accompany the disabled child to school due to illness, injury or death.
- training for any aides who may handle the service animal, other than the primary handler.
- a school-wide educational program to educate others on how to behave appropriately around the service animal.

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# SAMPLE

## SERVICE ANIMAL ACCESS REQUEST CHECKLIST

School Division: \_\_\_\_\_

Student: \_\_\_\_\_

School: \_\_\_\_\_

Date: \_\_\_\_\_

The following uses a service dog as a framework for this checklist.<sup>8</sup>

CONSIDERATIONS	COMMENTS	YES	NO
1. Is the dog a “trained service dog”?	Identify type of service dog: _____  A “trained service dog” can be called a: <ul style="list-style-type: none"> <li>• hearing dog</li> <li>• guide dog</li> <li>• assistance dog</li> <li>• seizure alert dog</li> <li>• mobility dog</li> <li>• psychiatric service dog</li> <li>• autism service dog</li> </ul> A “trained service dog” is NOT called a: <ul style="list-style-type: none"> <li>• skilled companion animal</li> <li>• therapy dog</li> <li>• social dog</li> <li>• facility dog</li> <li>• trained agility dog</li> <li>• police dog</li> <li>• search and rescue dog</li> <li>• helping dog</li> <li>• support dog</li> </ul>		
2. Does the dog perform task(s) or function(s) that mitigate the student’s disability?	<ul style="list-style-type: none"> <li>• hearing</li> <li>• guiding</li> <li>• retrieving objects</li> <li>• carrying objects</li> <li>• pulling a wheelchair</li> </ul>		

<sup>8</sup> See FTN 4 for additional guidance related to trained miniature horses.

	<ul style="list-style-type: none"> <li>• opening doors</li> <li>• seizure alert</li> <li>• allergen alert</li> <li>• diabetes alert</li> <li>• balance or mobility assistance preventing or interrupting destructive or impulsive behavior</li> <li>• Other: _____</li> </ul> <p style="text-align: center;"><b>Or</b></p> <p>Has a medical professional confirmed the student’s disability and need for a service dog?</p>		
3. Do the dog and its primary handler have satisfactory proof of training? <sup>9</sup>	<ul style="list-style-type: none"> <li>• Certificate from ADI member organization provided?<sup>10</sup></li> <li>• Other proof of training?</li> <li>• Is it readily apparent that the dog is trained to do work or perform tasks for the disabled student?</li> <li>• If a school employee serves as the primary handler during school hours, ask whether that school employee is or will be trained.</li> </ul>		
4. Does the dog have a current health certificate?	Certificate from veterinarian provided?		
5. Does the dog meet all the Minimum Standards for a service dog?	<p>Based on observation:</p> <ul style="list-style-type: none"> <li>i. Dog is clean, well-groomed and does not have an offensive odor;</li> <li>ii. Dog does not urinate or defecate in inappropriate locations;</li> <li>iii. Dog does not solicit attention, visit or annoy any member of the general public;</li> <li>iv. Dog does not vocalize unnecessarily, i.e., barking, growling or whining;</li> <li>v. Dog shows no aggression towards people or other animals; and</li> <li>vi. Dog does not solicit or steal food or</li> </ul>		

<sup>9</sup> Recall that the school division may not require proof of service animal certification or license. See page 6 of these Guidelines for additional information.

<sup>10</sup> There are three Virginia member organizations of Assistance Dogs International, Inc.: Service Dogs of Virginia, Inc, located in Charlottesville; St. Francis of Assisi Service Dog Foundation in Roanoke; and Blue Ridge Assistance Dogs, Inc., in Manassas. Note: These organizations have indicated that they are no longer willing to “test” dogs that have not come through their program.

	other items from the general public.		
6. If the primary handler is not the student, is the handler otherwise qualified to be on school property?	Consider primary handler's criminal history background, relevant court orders, permission of parent/guardian.		

Any "No" responses may support denial of access.