Animals in the Service of People: Sense and Nonsense on Lawful Uses of Assistance Animals

Friday, December 28, 2012
8:30 a.m.–11:30 a.m.

Oregon State Bar Center
Tigard, Oregon

3 General CLE or Access to Justice credits
Presented by:

- Geordie Duckler, Ph.D., The Animal Law Practice, Tigard
- Heidi von Ravensberg, University of Oregon, College of Education, Eugene

8:00  Registration

8:30  The Rules Themselves

- Every state, federal statute, and regulation about assistance animals
- Modern case law

9:30  Working, Shopping, Riding, and Living with Assistance Animals

- Service animals in housing, public transportation, and the workplace
- Public policies and political realities
- Interactions with the service industry

10:15  Break

10:30  A Real World Experience

A group dialogue with an Oregon attorney who uses a service animal to assist her with daily life activities and a frank assessment of the hurdles she must face and overcome

11:30  Adjourn
Geordie Duckler, Ph.D., *The Animal Law Practice, Tigard*. Dr. Duckler heads The Animal Law Practice, a well-known, unique private law practice in Portland, Oregon. The practice’s clients are companion, domestic, commercial, and exotic animal owners and keepers, and its main focus is on the resolution, litigation, and trial of animal-related disputes in cases at the state and federal levels. With over 600 animal law cases behind him to date, Dr. Duckler prosecutes and defends many cases each year in areas ranging from relatively minor county code violations to major veterinary malpractice suits and livestock injury cases. His practice is the only one of its kind on the West Coast and one of a small handful in the entire nation. Dr. Duckler is licensed to practice law in both Oregon and California.

Among other achievements, Dr. Duckler’s 1997 law review article about laws affecting zoo animals received national recognition and became the focus of a landmark conference by the Bar Association of New York. More recent law review articles have addressed the economic value of domestic animals and evidentiary problems in the courtroom. In 2001, Dr. Duckler made headlines in *Brock v. Rowe*, a civil action in Washington County that initiated significant national attention for championing a new tort, “loss of companionship,” as well as for the recovery of emotional distress damages for companion pet owners in Oregon. In 2006, Dr. Duckler again made headlines in *Greenup v. Weaver*, a civil action in Clackamas County that galvanized international attention on the tort and resulted in one of the highest jury verdicts in the country in an animal death case.

Dr. Duckler is frequently profiled and quoted in local, regional, and national newspapers and magazines and has contributed to many television and radio programs concerning animal law issues and cases. An outspoken advocate for owners’ rights, Dr. Duckler’s cases have been covered by *The Oregonian, The Tribune, Willamette Week, Bark, The National Law Journal, Court TV Radio, Newsweek, The New Yorker, The New York Times, The Chronicle of Higher Education, National Public Radio, and the BBC.*

Heidi von Ravensberg, *University of Oregon, College of Education, Eugene*. Ms. von Ravensberg serves as community outreach liaison for two school-based functional behavioral assessment research projects. Her contributions include developing and presenting community resource guides to educators and parents, researching and contacting community organizations, and developing and maintaining a web page. She is also an Adjunct Instructor for the School of Law and a regular speaker and author on disability law.
Animals in the Service of People: Sense and Nonsense on Lawful Uses of Assistance Animals

GEORDIE DUCKLER, PH.D.
The Animal Law Practice
Tigard, Oregon

Contents

Schedule ................................................................. iii
Faculty ................................................................... v
I. Federal Statutes ............................................................. 1
   A. 29 U.S.C. Section 701 et seq. (Rehabilitation Act of 1973) ........................................... 1
   B. 42 U.S.C. Section 3604 et seq. (Fair Housing Act) ......................................................... 1
   C. 42 U.S.C. Section 12111 et seq. (Americans with Disabilities Act) ........................... 1
II. State Statutes ................................................................ 5
    A. ORS 346.620. ........................................................... 5
    B. ORS 346.650. ........................................................... 5
    C. ORS 346.680. ........................................................... 5
    D. ORS 346.685. ........................................................... 6
    E. Assistance Dogs for Persons Who are Blind or Deaf ................................................. 6
    F. Assistance Animals for Persons with Physical Impairment ....................................... 7
III. Local Rule. ................................................................. 11
IV. Cases ..................................................................... 11
    A. General Principles ..................................................... 11
Appendix—Code of Federal Regulations ................................. 15
   I. Title 28—Judicial Administration ................................. 15
      Part 36—Nondiscrimination on the Basis of Disability by Public Accommodations
      and in Commercial Facilities ...................................... 15
      Subpart B—General Requirements § 36.201- § 36.204 ..................................................... 15
      Subpart C—Specific Requirements § 36.301- § 36.302 .................................................. 16
   II. Title 45—Public Welfare ........................................... 22
      Subtitle A—Department of Healthand Human Services ........................................... 22
      Subchapter A—General Administration ................................................................. 22
      Part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities
      Receiving Federal Financial Assistance ............................................................... 22
      Subpart A—General Provisions § 84.4 .............................................................. 22
      Subpart C—Accessibility § 84.21 .............................................................. 23
I. FEDERAL STATUTES

A. 29 U.S.C. Section 701 et seq. (Rehabilitation Act of 1973)

Section 504 states (in part):

“No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”

B. 42 U.S.C. Section 3604 et seq. (Fair Housing Act)

“It shall be unlawful:

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap…

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap...

(3) Discrimination includes:

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises...

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling…”

C. 42 U.S.C. Section 12111 et seq. (Americans with Disabilities Act)

1. Under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, a privately owned business that serves the public such as a restaurant is prohibited from discriminating against individuals with disabilities. The ADA requires such businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed. The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

2. Service animals are any animal which performs some of the functions and tasks that the individual with a disability cannot perform for him or herself. While guide dogs are one type of service animal, used by some individuals who are blind and the type of service animal with which most people are familiar, many other types exist as well. Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If the restaurant owner is not certain that an animal is a service animal, he may ask the person who has the animal if it is a service animal required because of a disability. However, an individual who is going to a restaurant is not likely to be carrying documentation of his or her medical condition or disability. Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, the restaurant owner may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.
3. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. An individual with a service animal may not be segregated from other customers. Even if the restaurant has a clearly posted “no pets” sign or policy, a service animal is not a pet and the ADA requires the restaurant owner to modify any “no pets” policy to allow the use of a service animal by a person with a disability. This does not mean the restaurant owner must abandon a “no pets” policy altogether, but simply must make an exception for service animals.

4. Even if a county health department has informed the restaurant that only a guide dog may be admitted, the business is still violating the ADA if it refuses to admit any other type of service animal on the basis of local health department regulations or other state or local laws. The ADA provides greater protection for individuals with disabilities and so it takes priority over the local or state laws or regulations. The restaurant cannot charge a maintenance or cleaning fee for customers who bring service animals into the restaurant. Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages.

5. The care or supervision of a service animal is solely the responsibility of his or her owner. The restaurant owner is not required to provide care or food or a special location for the animal, and may exclude any animal, including a service animal, from the restaurant when that animal’s behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards other guests or customers may be excluded. The restaurant owner may not make assumptions, however, about how a particular animal is likely to behave based on past experience with other animals. Each situation must be considered individually. Although the restaurant owner may exclude any service animal that is out of control, he should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

6. ADA [42 U.S.C. 12101]

**DEFINITION OF DISABILITY**

SEC. 12102. [Section 3]

“(1) Disability. — The term “disability” means, with respect to an individual —

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

B) Major bodily functions
For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.”

SUBCHAPTER I [TITLE I] — EMPLOYMENT

DEFINITIONS

SEC. 12111. [Section 101]

“(9) Reasonable accommodation. — The term “reasonable accommodation” may include —

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.
(10) Undue hardship. —

(A) In general. — The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered. — In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include —

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.”

DISCRIMINATION

SEC. 12112. [Section 102]

“(a) General rule. — No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction. — As used in subsection (a) of this section, the term “discriminate against a qualified individual on the basis of disability” includes —

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration —

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
Animals in the Service of People: Sense and Nonsense on Lawful Uses of Assistance Animals

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).”

SEC. 304. PROHIBITION OF DISCRIMINATION IN SPECIFIED PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

“(a) General Rule. — No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.”

II. STATE STATUTES

A. ORS 346.620

ORS 346.620 says that a person who is blind has the right to have a dog guide with the person, and a trainer has the right to have a dog guide or dog guide trainee with the trainer, in any place of public accommodation so long as the person or trainer controls the behavior of the dog. A trainer or a person who is blind is not required to pay an additional fee or admission charge for the dog guide, and a trainer or a person who is blind is liable for any damages done to a place of public accommodation.

B. ORS 346.650

ORS 346.650 says that a person who is deaf has the right to have a hearing ear dog with the person, and a trainer of a hearing ear dog has the right to have the hearing ear dog or hearing ear dog trainee with the trainer, in any place of public accommodation so long as the person or trainer controls the behavior of the dog. A trainer of a hearing ear dog or a person who is deaf is not required to pay an additional fee or admission charge for the hearing ear dog, and a trainer of a hearing ear dog or a person who is deaf is liable for any damages done to a place of public accommodation.

C. ORS 346.680

ORS 346.680 defines an “assistance animal” as any animal trained to assist a person with a physical impairment in one or more daily life activities, including but not limited to:

(a) Dog guides, as defined in ORS 346.610;
(b) Hearing ear dogs, as defined in ORS 346.640;
(c) An animal trained to pull a wheelchair;
(d) An animal trained to fetch dropped items; and
(e) An animal trained to perform balance work.
The statute also defines “person with a physical impairment” as any person who has a permanent physical impairment, whose physical impairment limits one or more of daily life activities and who has a record of impairment and is regarded by health care practitioners as having such an impairment, requiring the use of an assistance animal including but not limited to blindness, deafness and complete or partial paralysis.

D. ORS 346.685

Under ORS 346.685, a person with a physical impairment has the right to have an assistance animal with the person, and a trainer has the right to have an assistance animal or assistance animal trainee with the trainer, in any place of public accommodation so long as the person or trainer controls the behavior of the animal. A trainer or a person with a physical impairment is not required to pay an additional fee or admission charge for the assistance animal, and a trainer or a person with a physical impairment is liable for any damages done to a place of public accommodation.

E. Assistance Dogs for Persons Who are Blind or Deaf

ORS 346.610:
(1) “Dog guide” means a dog that is wearing a dog guide harness and is trained to lead or guide a person who is blind.

(2) “Dog guide trainee” means a dog undergoing training to lead or guide a person who is blind.

(3) “Mode of transportation” means any mode of public transportation operating within this state except for parlor, lounge, or club car of a common carrier by railroad.

(4) “Person who is blind” means a person who has vision of 20/200 or less with the best correction or has a visual field of 20 degrees or less.

(5) “Public accommodation” means a place of public accommodation as defined in ORS 659A.400.

(6) “Trainer” means a person who trains dogs to lead or guide persons who are blind.

ORS 346.620:
(1) A person who is blind has the right to have a dog guide with the person, and a trainer has the right to have a dog guide or dog guide trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the person or trainer controls the behavior of the dog.

(2) A trainer or a person who is blind is not required to pay an additional fee or admission charge for the dog guide.

(3) A trainer or a person who is blind is liable for any damages done to a place of public accommodation or to any mode of transportation by the dog guide.

ORS 346.630
[Prohibition against discriminating in renting housing because of dog guide; remedy]
(1) A landlord, as defined in ORS 90.100, may not refuse to rent a dwelling unit, as defined in ORS 90.100, to a person who is blind on the basis of the person’s use or possession of a dog guide.

(2) A person who is blind has a cause of action to recover compensatory damages or $200, whichever is greater, from any landlord, as defined in ORS 90.100, who refuses to rent a dwelling unit, or who charges additional rent, on the basis of the person’s use or possession of a dog guide. The court may award reasonable attorney fees to the prevailing party in an action under this section.
Animals in the Service of People: Sense and Nonsense on Lawful Uses of Assistance Animals

(3) A person who is blind is not required to pay an additional nonrefundable fee or an excessive deposit for the dog guide.

(4) A person who is blind is liable for any damages done to the dwelling unit by the dog guide.

ORS 346.640:

(1) “Person who is deaf” means a person whose hearing disability precludes successful processing of linguistic information through audition with or without a hearing aid.

(2) “Hearing ear dog” means a dog that is on an orange leash and that is trained to assist a person who is deaf.

(3) “Hearing ear dog trainee” means a dog undergoing training to assist a person who is deaf.

(4) “Mode of transportation” means any mode of public transportation operating within this state except for parlor, lounge, or club car of a common carrier by railroad.

(5) “Public accommodation” means a place of public accommodation as defined in ORS 659A.400.

ORS 346.650

[Hearing ear dog in place of public accommodation or on public transportation for person who is deaf; liability]

(1) A person who is deaf has the right to have a hearing ear dog with the person, and a trainer of a hearing ear dog has the right to have the hearing ear dog or hearing ear dog trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the person or trainer controls the behavior of the dog.

(2) A trainer of a hearing ear dog or a person who is deaf is not required to pay an additional fee or admission charge for the hearing ear dog.

(3) A trainer of a hearing ear dog or a person who is deaf is liable for any damages done to a place of public accommodation or to any mode of transportation by the hearing ear dog.

ORS 346.660

[Prohibition against discriminating in renting housing because of hearing ear dog]

(1) A landlord, as defined in ORS 90.100, may not refuse to rent a dwelling unit, as defined in ORS 90.100, to a person who is deaf on the basis of the use or possession of a hearing ear dog.

(2) A person who is deaf is not required to pay an additional nonrefundable fee for the hearing ear dog.

(3) A person who is deaf is liable for any damages done to the dwelling unit by the hearing ear dog.

F. Assistance Animals for Persons with Physical Impairment

ORS 346.680:

(1) “Assistance animal” means any animal trained to assist a person with a physical impairment in one or more daily life activities, including but not limited to:

(a) Dog guides, as defined in ORS 346.610;
Animals in the Service of People: Sense and Nonsense on Lawful Uses of Assistance Animals

(b) Hearing ear dogs, as defined in ORS 346.640;
(c) An animal trained to pull a wheelchair;
(d) An animal trained to fetch dropped items; and
(e) An animal trained to perform balance work.

(2) “Assistance animal trainee” means any animal undergoing training to assist a person with a physical impairment.

(3) “Daily life activity” includes but is not limited to:
(a) Self-care;
(b) Ambulation;
(c) Communication; or
(d) Transportation.

(4) “Mode of transportation” means any mode of transportation operating within this state.

(5) “Person with a physical impairment” means any person who has a permanent physical impairment, whose physical impairment limits one or more of daily life activities and who has a record of impairment and is regarded by health care practitioners as having such an impairment, requiring the use of an assistance animal including but not limited to blindness, deafness and complete or partial paralysis.

(6) “Public accommodation” means a place of public accommodation as defined in ORS 659A.400 including but not limited to educational institutions, airlines and restaurants. The exception stated in ORS 659A.400 (2) is not an exception under ORS 90.390 and 346.680 to 346.690.

ORS 346.685
[Rights of person with physical impairment and trainer; prohibition on admission charge for animal; access to transportation; liability for damage by animal]

(1) A person with a physical impairment has the right to have an assistance animal with the person, and a trainer has the right to have an assistance animal or assistance animal trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the person or trainer controls the behavior of the animal.

(2) A trainer or a person with a physical impairment is not required to pay an additional fee or admission charge for the assistance animal.

(3) The assistance animal shall be allowed to accompany its owner in an ambulance or other mode of transportation in the event of a medical emergency. If the owner is unconscious, the assistance animal shall be placed in an emergency veterinary clinic until the person regains consciousness and can make arrangements for the animal, or a relative responsible for the injured person is contacted and can make arrangements for the animal, or until the injured person dies, in which case the authorities will attempt to contact the school, where the animal was trained, for further action.

(4) A trainer or a person with a physical impairment is liable for any damages done to a place of public accommodation or to any mode of transportation by the assistance animal.

ORS 346.687
[Damages recoverable for harm or theft of assistance animal]
In addition to and not in lieu of any other penalty provided by state law, a person with a physical impairment who uses an assistance animal or the owner of an assistance animal may bring an action for economic and noneconomic damages against any person who steals or, without provocation, attacks the assistance animal. The person with a physical impairment or owner may also bring an action for such damages against the owner of any animal that, without provocation, attacks an assistance animal. The action authorized by this subsection may be brought by the person with a physical impairment or owner even if the assistance animal was in the custody or under the supervision of another person when the theft or attack occurred.

If the theft of or unprovoked attack on an assistance animal described in subsection (1) of this section results in the death of the animal or the animal is not returned or if injuries sustained in the theft or attack prevent the animal from returning to service as an assistance animal, the measure of economic damages shall include, but need not be limited to, the replacement value of an equally trained assistance animal, without any differentiation for the age or the experience of the animal. In addition, the person with a physical impairment or owner may recover any other costs and expenses, including, but not limited to, costs of temporary replacement assistance services, whether provided by another assistance animal or a person, incurred as a result of the theft of or injury to the animal.

If the theft of or unprovoked attack on an assistance animal described in subsection (1) of this section results in injuries from which the animal recovers and returns to service, or if the animal is stolen but is recovered and returns to service, the measure of economic damages shall include, but need not be limited to, the veterinary medical expenses, costs of temporary replacement assistance services, whether provided by another assistance animal or a person, and any other costs and expenses incurred by the person with a physical impairment or owner as a result of the theft of or injury to the animal.

A cause of action does not arise under this section if the person with a physical impairment, owner or the person having custody or supervision of the assistance animal was committing a criminal or civil trespass at the time of the theft of or attack on the assistance animal.

The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

ORS 346.690

[Prohibition against discrimination in renting housing because of assistance animal]

(1) A landlord, as defined in ORS 90.100, may not refuse to rent a dwelling unit, as defined in ORS 90.100, to a person with a physical impairment on the basis of the person’s use or possession of an assistance animal.

(2) A person with a physical impairment has a cause of action to recover compensatory damages or $200, whichever is greater, from any landlord who refuses to rent a dwelling unit, or who charges additional rent, on the basis of the person’s use or possession of an assistance animal. The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

(3) A person with a physical impairment is not required to pay an additional nonrefundable fee or an excessive deposit for the assistance animal.
(4) A person with a physical impairment is liable for any damages done to the dwelling unit by the assistance animal.

ORS 30.822

[Action for theft of or injury to search and rescue animal or therapy animal]

(1) In addition to and not in lieu of any other penalty provided by state law, the owner of a search and rescue animal or a therapy animal, as defined in ORS 167.352, may bring an action for economic and noneconomic damages against any person who steals or, without provocation, attacks the search and rescue animal or therapy animal. The owner may also bring an action for such damages against the owner of any animal that, without provocation, attacks a search and rescue animal or therapy animal. The action authorized by this subsection may be brought by the owner even if the search and rescue or therapy animal was in the custody or under the supervision of another person when the theft or attack occurred.

(2) If the theft of or unprovoked attack on a search and rescue animal or therapy animal described in subsection (1) of this section results in the death of the animal or the animal is not returned or if injuries sustained in the theft or attack prevent the animal from returning to service as a search and rescue animal or therapy animal, the measure of economic damages shall include, but need not be limited to, the replacement value of an equally trained animal, without any differentiation for the age or the experience of the animal.

(3) If the theft of or unprovoked attack on a search and rescue animal or therapy animal described in subsection (1) of this section results in injuries from which the animal recovers and returns to service, or if the animal is stolen and is recovered and returns to service, the measure of economic damages shall include, but need not be limited to, the costs of temporary replacement services, veterinary medical expenses and any other costs and expenses incurred by the owner as a result of the theft of or injury to the animal.

(4) No cause of action arises under this section if the owner or the person having custody or supervision of the search and rescue animal or therapy animal was committing a criminal or civil trespass at the time of the attack on the animal.

(5) The court may award reasonable attorney fees to the prevailing party in an action under this section.

ORS 167.352

[Interfering with assistance, search and rescue or therapy animal]

(1) A person commits the crime of interfering with an assistance, a search and rescue or a therapy animal if the person intentionally or knowingly:

(a) Injures or attempts to injure an animal the person knows or reasonably should know is an assistance animal, a search and rescue animal or a therapy animal;

(b) Interferes with an assistance animal while the assistance animal is being used to provide assistance to a person with a physical impairment; or

(c) Interferes with a search and rescue animal or a therapy animal while the animal is being used for search and rescue or therapy purposes.

(2) As used in this section, “assistance animal” and “person with a physical impairment” have the meanings given those terms in ORS 346.680.
(3) As used in this section and ORS 30.822:

(a) “Search and rescue animal” means that the animal has been professionally trained for, and is actively used for, search and rescue purposes.

(b) “Therapy animal” means that the animal has been professionally trained for, and is actively used for, therapy purposes.

(4) Interfering with an assistance, a search and rescue or a therapy animal is a Class A misdemeanor.

III. LOCAL RULE

City of Portland Code Section 23.01.070, entitled “Discrimination in Places of Public Accommodation Prohibited”, says that it shall be unlawful to discriminate in public accommodations on the basis of an individual’s race, religion, color, sex, national origin, marital status, age if the individual is 18 years of age or older, or disability, by committing any of the acts made unlawful under the provisions of ORS 659.037, 659.425, or ORS 30.670 to 30.685.

IV. CASES

A. General Principles

ADA regulations do not create a blanket right of universal access for all service animals.

An animal that simply provides comfort or reassurance is equivalent to a household pet and does not qualify as a “service animal” under the ADA.

There must be some evidence of individual training to set service animal apart from ordinary pet.

There are no requirements as to the amount or type of training that a “service animal” must undergo to qualify under ADA, nor the type of work or assistance that it must provide, but it must at least be trained to perform tasks or do work for the benefit of a disabled individual.


Modification of concert hall’s policies to allow quadriplegic patron to attend performances with service animal that may have made disruptive noises at past performances, if such behavior would have been acceptable if engaged in by humans, was necessary and reasonable accommodation under ADA; modification struck well-reasoned and carefully-crafted balance between patron’s needs and concert hall’s interests by generally allowing access for service animals, but providing that they could be excluded under certain circumstances

Lentini v. Cal. Center for the Arts, 370 F.3d 837 (9th Cir. Cal. 2004)

Hospital did not violate the ADA by its treatment of disabled patient who used service animal and insisted that it remain in her room 24 hours a day; hospital did not deny admission to patient and her St. Bernard, but merely tried to accommodate all of its patients in its attempts to limit effects of dog’s extremely offensive odor which permeated entire floor of hospital by closing patient’s door, installing air filter in her room, and re-assigning staff who had allergic reactions, respiratory problems and skin rashes from the dog.
Animals in the Service of People: Sense and Nonsense on Lawful Uses of Assistance Animals


Reasonable accommodations allowed for quarantining animals.

*Crowder v. Kitagawa,* 81 F.3d. 1480 (9th Cir. Hawaii 1996)

“No animals” policy that fundamentally alters nature of public accommodation must be modified.

*Johnson v. Gambrinus Co.,* 116 F.3d 1052 (5th Cir. Texas 1997)

Miniature horse does not qualify as service animal where it did not assist and perform tasks for owner’s benefit.


Store policy where employees inquire into what “task or function” it is that animal serves disabled person is legitimate under state law.


Defendant didn’t show she had a substantial limitation in ability to walk or move such that she needed a service animal to assist her, and thus was not entitled to ADA protections.

*Satterwhite v. City of Auburn,* 945 So. 2d 1076 (Ala. Cri. App. 2006)

The Fair Housing Act encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability such as “emotional support animals”


Landlord did not violate FHA when it delayed making a decision on a request for several months, requested tenant’s school and medical records, and filed suit for declaratory judgment since it was entitled to seek additional information on tenant’s disability, since initial application contained no diagnosis and it did not began eviction proceedings or remove tenant during litigation.


It was reasonable for landlord to require that recognized training facility or person certify that service animal has degree of training and temperament which would enable it to ameliorate effects of its owner’s disability and to require opinion of doctor about the disability and manner in which the animal helped.

*In re Kenna Co-op Homes, Corp.,* 557 S.E. 2d 787 (W. Va. 2001)
Accommodation requested by disabled employee with service dog that employer provide nonskid floor covering so that dog could maintain traction on tile flooring was required accommodation; use of service animal as assistive device was no different than use of wheelchair, scooter or walker

_McDonald v. DEQ_, 214 P.3d 749 (Mont. 2009)

Utah expanded its definition of what is a “service animal” by adding both “signal dogs” as well as “any other animal individually trained to do work or perform tasks for the benefit of a person with a disability”, a definition which itself includes “emotional support animals” and “psychiatric therapy animals”.


Opossum as assistance animal


Horse as an assistance animal


Monkey as an assistance animal


Birds and cats as assistance animals


Trainer not required to have professional credentials to be considered as sufficient trainer for assistance animal

_Bronk v. Ineichen_, 54 F.3d 425 (7th Cir. Wis.1995).
Appendix—Code of Federal Regulations

I. TITLE 28—JUDICIAL ADMINISTRATION

Part 36—Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

Subpart B—General Requirements § 36.201- § 36.204

§ 36.201

General.

(a) Prohibition of discrimination. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.

(b) Landlord and tenant responsibilities. Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

§ 36.202

Activities.

(a) Denial of participation. A public accommodation shall not subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(b) Participation in unequal benefit. A public accommodation shall not afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(c) Separate benefit. A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(d) Individual or class of individuals. For purposes of paragraphs (a) through (c) of this section, the term “individual or class of individuals” refers to the clients or customers of the public accommodation that enters into the contractual, licensing, or other arrangement.


Animals in the Service of People: Sense and Nonsense on Lawful Uses of Assistance Animals
§ 36.203
Integrated settings.

(a) General. A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(b) Opportunity to participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a public accommodation shall not deny an individual with a disability an opportunity to participate in such programs or activities that are not separate or different.

(c) Accommodations and services. (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

§ 36.204
Administrative methods.

A public accommodation shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.


Subpart C—Specific Requirements § 36.301- § 36.302

§ 36.301
Eligibility criteria.

(a) General. A public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

(b) Safety. A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) Charges. A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.
Appendix—Code of Federal Regulations

§ 36.302

Modifications in policies, practices, or procedures.

(a) General. A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) Specialties—(1) General. A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation’s area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

(2) Illustration—medical specialties. A health care provider may refer an individual with a disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider’s area of specialization, and if the referring provider would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

(c) Service animals—(1) General. Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) Exceptions. A public accommodation may ask an individual with a disability to remove a service animal from the premises if:

(i) The animal is out of control and the animal’s handler does not take effective action to control it; or

(ii) The animal is not housebroken.

(3) If an animal is properly excluded. If a public accommodation properly excludes a service animal under § 36.302(c)(2), it shall give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.

(4) Animal under handler’s control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether 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).

(5) Care or supervision. A public accommodation is not responsible for the care or supervision of a service animal.

(6) Inquiries. A public accommodation shall not ask about the nature or extent of a person’s disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation 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).

(7) **Access to areas of a public accommodation.** Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.

(8) **Surcharges.** A public accommodation shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people 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.

(9) **Miniature horses.** (i) A public accommodation shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

(ii) **Assessment factors.** In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public accommodation shall consider—

(A) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(B) Whether the handler has sufficient control of the miniature horse;

(C) Whether the miniature horse is housebroken; and

(D) Whether the miniature horse’s presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(iii) **Other requirements.** Sections 36.302(c)(3) through (c)(8), which apply to service animals, shall also apply to miniature horses.

(d) **Check-out aisles.** A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles are kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with disabilities as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

(e)(1) **Reservations made by places of lodging.** A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party—

(i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;

(ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;
(iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;

(iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and

(v) Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

(2) **Exception.** The requirements in paragraphs (iii), (iv), and (v) of this section do not apply to reservations for individual guest rooms or other units not owned or substantially controlled by the entity that owns, leases, or operates the overall facility.

(3) **Compliance date.** The requirements in this section will apply to reservations made on or after March 15, 2012.

(f) **Ticketing.**

(1)(i) For the purposes of this section, “accessible seating” is defined as wheelchair spaces and companion seats that comply with sections 221 and 802 of the 2010 Standards along with any other seats required to be offered for sale to the individual with a disability pursuant to paragraph (4) of this section.

(ii) **Ticket sales.** A public accommodation that sells tickets for a single event or series of events shall modify its policies, practices, or procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating—

(A) During the same hours;

(B) During the same stages of ticket sales, including, but not limited to, pre-sales, promotions, lotteries, wait-lists, and general sales;

(C) Through the same methods of distribution;

(D) In the same types and numbers of ticketing sales outlets, including telephone service, in-person ticket sales at the facility, or third-party ticketing services, as other patrons; and

(E) Under the same terms and conditions as other tickets sold for the same event or series of events.

(2) **Identification of available accessible seating.** A public accommodation that sells or distributes tickets for a single event or series of events shall, upon inquiry—

(i) Inform individuals with disabilities, their companions, and third parties purchasing tickets for accessible seating on behalf of individuals with disabilities of the locations of all unsold or otherwise available accessible seating for any ticketed event or events at the facility;

(ii) Identify and describe the features of available accessible seating in enough detail to reasonably permit an individual with a disability to assess independently whether a given accessible seating location meets his or her accessibility needs; and

(iii) Provide materials, such as seating maps, plans, brochures, pricing charts, or other information, that identify accessible seating and information relevant thereto with the same text or visual representations as other seats, if such materials are provided to the general public.

(3) **Ticket prices.** The price of tickets for accessible seating for a single event or series of events shall not be set higher than the price for other tickets in the same seating section for the same event or series of events. Tickets for accessible seating must be made available at all price levels for every event or series of events. If tickets for accessible seating at a particular price level...
cannot be provided because barrier removal in an existing facility is not readily achievable, then the percentage of tickets for accessible seating that should have been available at that price level but for the barriers (determined by the ratio of the total number of tickets at that price level to the total number of tickets in the assembly area) shall be offered for purchase, at that price level, in a nearby or similar accessible location.

(4) **Purchasing multiple tickets.** (i) **General.** For each ticket for a wheelchair space purchased by an individual with a disability or a third-party purchasing such a ticket at his or her request, a public accommodation shall make available for purchase three additional tickets for seats in the same row that are contiguous with the wheelchair space, provided that at the time of purchase there are three such seats available. A public accommodation is not required to provide more than three contiguous seats for each wheelchair space. Such seats may include wheelchair spaces.

(ii) **Insufficient additional contiguous seats available.** If patrons are allowed to purchase at least four tickets, and there are fewer than three such additional contiguous seat tickets available for purchase, a public accommodation shall offer the next highest number of such seat tickets available for purchase and shall make up the difference by offering tickets for sale for seats that are as close as possible to the accessible seats.

(iii) **Sales limited to fewer than four tickets.** If a public accommodation limits sales of tickets to fewer than four seats per patron, then the public accommodation is only obligated to offer as many seats to patrons with disabilities, including the ticket for the wheelchair space, as it would offer to patrons without disabilities.

(iv) **Maximum number of tickets patrons may purchase exceeds four.** If patrons are allowed to purchase more than four tickets, a public accommodation shall allow patrons with disabilities to purchase up to the same number of tickets, including the ticket for the wheelchair space.

(v) **Group sales.** If a group includes one or more individuals who need to use accessible seating because of a mobility disability or because their disability requires the use of the accessible features that are provided in accessible seating, the group shall be placed in a seating area with accessible seating so that, if possible, the group can sit together. If it is necessary to divide the group, it should be divided so that the individuals in the group who use wheelchairs are not isolated from their group.

(5) **Hold and release of tickets for accessible seating.** (i) **Tickets for accessible seating may be released for sale in certain limited circumstances.** A public accommodation may release unsold tickets for accessible seating for sale to individuals without disabilities for their own use for a single event or series of events only under the following circumstances—

(A) When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;

(B) When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or

(C) When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

(ii) **No requirement to release accessible tickets.** Nothing in this paragraph requires a facility to release tickets for accessible seating to individuals without disabilities for their own use.

(iii) **Release of series-of-events tickets on a series-of-events basis.** (A) **Series-of-events tickets sell-out when no ownership rights are attached.** When series-of-events tickets are sold out and a public accommodation releases and sells accessible seating to individuals without disabilities for
a series of events, the public accommodation shall establish a process that prevents the automatic reassignment of the accessible seating to such ticket holders for future seasons, future years, or future series, so that individuals with disabilities who require the features of accessible seating and who become newly eligible to purchase tickets when these series-of-events tickets are available for purchase have an opportunity to do so.

(B) Series-of-events tickets when ownership rights are attached. When series-of-events tickets with an ownership right in accessible seating areas are forfeited or otherwise returned to a public accommodation, the public accommodation shall make reasonable modifications in its policies, practices, or procedures to afford individuals with mobility disabilities or individuals with disabilities that require the features of accessible seating an opportunity to purchase such tickets in accessible seating areas.

(6) Ticket transfer. Individuals with disabilities who hold tickets for accessible seating shall be permitted to transfer tickets to third parties under the same terms and conditions and to the same extent as other spectators holding the same type of tickets, whether they are for a single event or series of events.

(7) Secondary ticket market. (i) A public accommodation shall modify its policies, practices, or procedures to ensure that an individual with a disability may use a ticket acquired in the secondary ticket market under the same terms and conditions as other individuals who hold a ticket acquired in the secondary ticket market for the same event or series of events.

(ii) If an individual with a disability acquires a ticket or series of tickets to an inaccessible seat through the secondary market, a public accommodation shall make reasonable modifications to its policies, practices, or procedures to allow the individual to exchange his ticket for one to an accessible seat in a comparable location if accessible seating is vacant at the time the individual presents the ticket to the public accommodation.

(8) Prevention of fraud in purchase of tickets for accessible seating. A public accommodation may not require proof of disability, including, for example, a doctor’s note, before selling tickets for accessible seating.

(i) Single-event tickets. For the sale of single-event tickets, it is permissible to inquire whether the individual purchasing the tickets for accessible seating has a mobility disability or a disability that requires the use of the accessible features that are provided in accessible seating, or is purchasing the tickets for an individual who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating.

(ii) Series-of-events tickets. For series-of-events tickets, it is permissible to ask the individual purchasing the tickets for accessible seating to attest in writing that the accessible seating is for a person who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating.

(iii) Investigation of fraud. A public accommodation may investigate the potential misuse of accessible seating where there is good cause to believe that such seating has been purchased fraudulently.

Appendix—Code of Federal Regulations

II. TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services.

Subchapter A—General Administration.

Part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance.

Subpart A—General Provisions § 84.4

§ 84.4

Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s needs.

(3) Despite the existence of separate or different aids, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aids, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped
persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Aids, benefits, or services limited by Federal law. The exclusion of nonhandicapped persons from aids, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aids, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Subpart C—Accessibility § 84.21

§ 84.21

Discrimination prohibited.

No qualified handicapped person shall, because a recipient’s facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]