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The Dog Days in American Public Schools: Observations and Suggestions Regarding the Laws, Challenges and Amazing Benefits of Allowing Service Animals to Accompany Children with Special Needs to School

INTRODUCTION*

In the summer of 2009, Carter was a five-year-old boy with severe autism.¹ On a daily basis, he had one to several tantrums lasting around an hour that involved kicking, screaming, and biting other people.² He also suffered from pica, an eating disorder where he would eat or attempt to eat non-food items.³ He refused to walk peacefully with his parents in public places and often ran away from his family unprovoked, sometimes into very real danger, like on-coming traffic.⁴ He struggled to fall asleep on his own, and when he did fall asleep, he woke up nearly every hour and attempted to run out of the house.⁵ His mother had to sleep in his room to calm him down and restrain him several times a night.⁶ On one occasion, Carter's mother failed to respond quickly enough, and Carter ended up outside, in a pond, in the middle of the night, in the dead of winter.⁷ Carter did not communicate with other individuals; in fact, he had never communicated effectively with another human being, or even so much as spoken an intelligible word to anyone or anything.⁸ Carter could not focus on any one task or person because he was constantly distracting himself by stimming or scripting.⁹

* The author would like to thank Professor Lisa Lukasik whose direction, inspiration and feedback made this Comment possible.

1. *Kalbfleisch ex rel. Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4*, 920 N.E.2d 651, 654 (Ill. App. Ct. 2009).

2. *Id.* at 655.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* Scripting or stimming involves sensory-stimulating behavior; in some children with special needs, this usually includes repetitive body movements and the vocalization of

Around the same time, Corbin, a Bouvier des Flandres dog, was being trained to specifically help Carter.¹⁰ An article of Carter's clothing and a video of Carter playing were sent to Corbin's training facility so that Corbin would know Carter's scent and voice intimately.¹¹ Corbin is naturally hypoallergenic and was trained to be gentle and patient with unpredictable children; furthermore, Corbin was taught seventy vocal commands, and was a product of Wilderwood Service Dogs.¹² Corbin's training was specific to Carter, exclusively designed to help Carter and his family with his special needs.¹³

On July 16, 2009, Carter and Corbin met for the first time.¹⁴ Corbin's trainers accompanied him and spent over a week with the Carter family, training each of them to properly utilize Corbin's specialized skills for Carter's benefit.¹⁵ In less than a month, Carter's life and the lives of others in his family were vastly different.¹⁶ Carter was, according to his mother, a "much happier child."¹⁷ Carter had far fewer tantrums with Corbin in his life; instead of lasting hours, they lasted just a few minutes and were nowhere near as violent or traumatic, thanks to Corbin's calming patience with Carter.¹⁸ Carter no longer ran away from his family when they were out and about because when he tried, Corbin physically restrained him until Carter calmed down.¹⁹ Carter's mother was able to sleep in her own room for the first time in two years because Corbin could sleep in Carter's room and calm him if he woke up in the middle of the night.²⁰ Furthermore, if Carter started to script or stim, Corbin would gently bat at Carter with his nose; as a result, Carter stopped stimming or scripting and was finally able to concentrate on and listen to others when they were speaking to him.²¹

a variety of sounds. Stephen M. Edelson, *Autistic Spectrum Disorders Fact Sheet: Self-Stimulatory Behavior (Stimming)*, AUTISM-HELP.ORG, <http://www.autism-help.org/behavior-stimming-autism.htm> (last visited October 1, 2012).

10. *Kalbfleisch*, 920 N.E.2d at 655

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 656.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

As a result of this progress, Carter and his family were finally able to do what was previously unimaginable given Carter's flight tendencies—go on a family vacation.²² They enjoyed what surely must have been a surreal weekend at Mark Twain Lake in Missouri without incident.²³ And, for the first time in his young life, Carter miraculously spoke clear and intelligible words when he asked Corbin, his new canine companion, to “wait” and “hold.”²⁴

This true story, while miraculous, is not an exception to the rule. Indeed, all across the country, service and support animals are working with children with special needs, protecting them from danger, teaching them new skills, allowing them to go new places, helping them learn, making social interactions possible, and just simply changing their lives for the better.²⁵

Despite the obvious benefits of these “service animals,” they undoubtedly come with their fair share of challenges, obstacles, and detractors,²⁶ particularly when students want to bring these amazing animals into school classrooms.²⁷ Other children may be allergic to or

22. *Id.*

23. *Id.*

24. *Id.*

25. *Commonly Asked Questions About Service Animals in Places of Business*, CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE (July 1996), <http://www.ada.gov/qasrvc.htm>.

26. *See, e.g., Christopher C. Ligatti, No Training Required: The Availability of Emotional Support Animals as a Component of Equal Access for the Psychiatrically Disabled Under the Fair Housing Act*, 35 T. MARSHALL L. REV. 139, 142 (2010) (highlighting numerous mental and emotional disabilities that emotional support animals can ease or even totally correct). Ligatti notes that:

As medical knowledge has advanced, tenants have sought to deal with mental and emotional disabilities including major depressive disorders, post-traumatic stress disorders, and anxiety disorders through the use of emotional support animals. The use of an emotional support animal, often prescribed and encouraged by a doctor, directly conflicts with many housing providers' no pet policies.

Id. (internal citations omitted).

27. *See, e.g., A.S. ex. rel Leonel S. v. Catawba Cnty. Bd. of Educ.*, No. 5:11CV27-RLV, 2011 U.S. Dist. LEXIS 87071 (W.D.N.C. Aug. 5, 2011) (showing an unfortunately common instance of school board resistance to a service animal being allowed in school classrooms because of the nature of the services it provided to its master—a child with special needs); *Gaudiello v. Del. Cnty. Intermediate Unit*, 796 F. Supp. 849 (E.D. Pa. 1992) (discussing an occasion in which a school board disallowed a student with special needs from bringing a dog to school because his mobility needs were already being met without the animal); *Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947 (E.D. Cal. 1990) (detailing a case in which a school board fought to keep a service animal out of its

deathly afraid of dogs,²⁸ educators and parents may find them distracting; and some may simply believe that these animals are unnecessary, given the extensive human help and assistance already available to children with special needs in schools.²⁹ Historically, because of these challenges and objections, schools were hesitant to allow these animals into classrooms.³⁰

Today, however, increasing numbers of schools, school districts and administrators, lawmakers, and parents have changed their perspectives and are much more open to allowing service and support animals in schools.³¹ This evolution of thought is largely the result of research which has recently led to changes in the applicable laws and regulations governing schools and children with special needs. Some of these changes have favored bringing service and support animals into the classroom.³² Yet, even with these positive changes, there is still work to be done. Specifically, the regulations in this area are not without flaws or their fair share of detractors and critics.

This Comment will celebrate the recent strides that have provided increased legal protection for service and support animals in the context of special education. However, it will also identify the areas requiring continued improvement, making a few suggestions as to the best way to make those improvements. To do so, this Comment will first briefly examine the history of service and support animals in schools and elsewhere. Next, it will introduce the law governing the use of service animals in schools, discussing its evolution and current state. Finally, this Comment will critically evaluate the strengths and weaknesses of the current state of the law, offering a few suggestions to remedy its potential weaknesses.

classrooms because it did not believe the animal was “educationally necessary” to a child with special needs).

28. See, e.g., Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 PEPP. L. REV. 1163, 1170 (2010) (“Some animals may produce allergic and respiratory disorders in their human handlers or other members of the household.” (citation omitted)).

29. *Pet Partners Therapy Animal Program: Frequently Asked Questions*, PET PARTNERS, <http://www.deltasociety.org/page.aspx?pid=267> (last visited Oct. 13, 2012).

30. *Id.*

31. See Melinda Jacobs, *AS20: Making Sense of Service Animal Requests in Your School*, 4 (2011), http://www.isbe.net/spec-ed/conf/2011/pdf/session1_service_animals.pdf.

32. See 28 C.F.R. § 35.104 (2012).

I. THE USE OF SERVICE ANIMALS IN SCHOOLS:
DEVELOPMENT, LITIGATION, AND THE BEGINNING OF CHANGE

A. A Brief History of Service Animals

Human beings have used animals for various forms of personal assistance for thousands of years.³³ In the last century, however, the relationship between man and beast has changed dramatically.³⁴ Three types of service animals—guide dogs, hearing dogs, and service dogs—became most prevalent.³⁵ After World War I, Germany began using dogs to assist war veterans who lost the use of their eyes in battle.³⁶ Shortly thereafter, in 1929, The Seeing Eye became the first American group to breed, train, and market dogs for the purpose of guiding those without sight.³⁷

Guide dogs help the blind/visually impaired to “see” in their everyday lives. Guide dogs assist by stopping their human companion before crossing streets and making sure the streets are safe to cross, by avoiding

33. Kristina Adams & Stacy Rice, *A Brief Information Resource on Assistance Animals for the Disabled*, ANIMAL WELFARE INFO. CTR., U.S. DEP'T OF AGRIC. (August 2003), <http://www.nal.usda.gov/awic/companimals/assist.htm> (“[H]orseback riding is mentioned throughout history as a cure for various sicknesses including gout, neurological disorders and depression.”); Huss, *supra* note 28, at 1166–67. Huss recounts the development of the use of service animals as follows:

There is a long history of the domestication of animals by humans, and subsequent use of those animals for a variety of purposes. . . .

. . . .

There are records that dogs were kept at healing temples in Ancient Greece. Certainly service animals have been part of our society since at least the thirteenth century. There are records describing systematic attempts to train dogs to assist persons with visual impairments in the late 1700s.

Formal techniques used to train service animals are recorded after World War I. Large-scale training of service animals to lead the blind occurred after World War I in Germany. Service animals were used in the United States in the late 1920s. The use of service animals began with dogs utilized to assist persons with visual disabilities. The first use of a service animal to assist a person with hearing limitations occurred in the United States in 1976.

Id. (internal citations omitted).

34. See Adams & Rice, *supra* note 33.

35. *Id.*

36. *Id.*

37. *Id.*; THE SEEING EYE, <http://www.seeingeye.org/> (last visited Oct. 13, 2012).

obstacles such as signs, cars, and other people, and by helping their companion locate things.³⁸

Roy Kabat, a dog trainer for television and film productions, developed dogs for the hearing impaired in the 1970s.³⁹ “Hearing dogs provide the sense of sound to their hearing impaired companions. These dogs can be trained to alert a person to a smoke alarm, door knock or bell, telephone, alarm clock, kitchen timer, baby cry, or the person’s own name.”⁴⁰ Lastly, there is the somewhat ambiguous, though still helpful category of “companion animals” or “service dogs.”⁴¹

Canine Companions for Independence . . . pioneered the concept of the service dog, a highly trained canine used to assist people who have disabilities with specialized services in 1975. Service dogs are trained to be the strength and movement for people with muscular dystrophy, multiple sclerosis, cerebral palsy, and congenital abnormalities. A service dog can perform many tasks for their companions such as picking up dropped articles, pulling wheelchairs, assisting walkers, turning lights on and off, opening and closing doors, carrying school books, and pulling their companions out of bed.⁴²

These three categories, while varied and rather encompassing, fail to account for the most recent type of animal helper—those very unique animals providing emotional support to children with special needs and learning disabilities.⁴³ Because these animals perform mostly emotional tasks,⁴⁴ they often do not fit into any of the three aforementioned

38. Adams & Rice, *supra* note 33.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*; see also Huss, *supra* note 28, at 1169. When discussing the benefits to humans who use service animals, Huss states:

Although guide and hearing dogs are perhaps the most recognizable of service animals, it is not uncommon to have service animals assisting persons with mobility issues. The use of service animals to assist persons with psychiatric disabilities, such as depression, panic disorder and post-traumatic stress disorder, has also become common.

Huss, *supra* note 28, at 1169 (internal citations omitted).

43. See, e.g., Rebecca J. Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 ANIMAL L. 69, 71 (2005) (discussing the major legal issues that arise when individuals seek to keep companion animals in various types of housing).

44. Huss, *supra* note 28, at 1169. In her article, Huss reiterates:

There is substantial research on the benefits, including psychosocial, of service animals assisting persons with disabilities. Some of the psychosocial functions of service animals include “(1) companionship; (2) something to keep one busy; (3)

categories, though they frequently perform many of the same functions described in the final, “companion animal” classification.⁴⁵ Historically, the only animals provided with any legal protection were those performing very specific, physical tasks for their humans.⁴⁶ Notice, for example, the definition of “service animals” established in 1992 in the Americans with Disabilities Act (“ADA”):

Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.⁴⁷

While this definition largely encompasses the three aforementioned categories of dogs performing physical tasks—guide dogs, hearing dogs, and service dogs—it does not provide any protection whatsoever for emotional support animals.⁴⁸ It also fails to afford any explicit recognition of animals that provide emotional or mental support for individuals with psychiatric or neurological disabilities.⁴⁹ That such protection existed in the pre-2012 regulation could certainly be implied and argued; however, there is no mention of such services in the exemplary list provided.⁵⁰

Ultimately though, this lack of explicit recognition and legal protection for emotional support animals did not stop a plethora of individuals from buying, training, and using such animals to assist their children with special needs.⁵¹ Unsurprisingly, following the tremendous success of these animals in homes and other public locations, parents began

something to care for; (4) something to touch and fondle; (5) a focus of attention; (6) exercise; [and] (7) safety.”

Id. (internal citations omitted).

45. *Id.*

46. *See Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240 (2d Cir. 2008); *A.S. ex. rel Leonel S. v. Catawba Cnty. Bd. of Educ.*, No. 5:11CV27-RLV, 2011 U.S. Dist. LEXIS 87071 (W.D.N.C. Aug. 5, 2011); *Gaudiello v. Del. Cnty. Intermediate Unit*, 796 F. Supp. 849 (E.D. Pa. 1992); *Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947 (E.D. Cal. 1990).

47. 28 C.F.R. § 36.104 (1992). This remained the exact definition until 2011. Not until the 2012 publication of the ADA was the language regarding service animals changed in any manner. *See* 28 C.F.R. § 35.104 (2012).

48. *See* 28 C.F.R. § 36.104 (1992).

49. *See id.*

50. *See id.*

51. Karen Ravn, *Service Dogs are Beyond Fetching*, L.A. TIMES (July 18, 2011), <http://www.latimes.com/health/la-he-service-dogs-20110718,0,5786750,full.story>.

to request that their children be allowed to attend school with their canine companions.⁵² The predictable result was a litany of litigation.⁵³ While school districts did not want animals in their classrooms, particularly those not assisting the blind or deaf, parents wanted their children provided for by their animal companions; to solve this dilemma, both parties turned to the courts.⁵⁴

B. Litigation

Consider first the case of *Sullivan v. Vallejo City Unified School District*, in which a sixteen-year-old girl with cerebral palsy and a learning disability obtained a dog from Canine Companions for Independence.⁵⁵ When her parents requested that their daughter be allowed to bring her new dog to school, the school district, relying on a 1990 regulation that did not recognize service animals, refused because it was not “educationally necessary.”⁵⁶ Sadly, this was not at all uncommon.

Next, consider the case of Michael Gaudiello, a thirteen-year-old boy from Delaware County, Pennsylvania.⁵⁷ Michael is a child with special needs, and to help him “be more independent and build self-pride,” Michael’s parents purchased a dog from Independence Dogs.⁵⁸ Subsequently, in a letter requesting that Michael be allowed to bring his dog to school, Michael’s parents admitted that “there won’t be much for the dog to do” at school, but noted that the “dog will be Michaels [sic] constant companion.”⁵⁹ In particular, the parents stressed the importance of Michael and the dog remaining together at all times, including during school, despite the lack of physical chores the dog could accomplish while in the classroom.⁶⁰ Specifically, the parents initially⁶¹ stressed the importance of

52. See, e.g., *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240 (2d Cir. 2008); *A.S. ex. rel Leonel S. v. Catawba Cnty. Bd. of Educ.*, No. 5:11CV27-RLV, 2011 U.S. Dist. LEXIS 87071 (W.D.N.C. Aug. 5, 2011); *Gaudiello v. Del. Cnty. Intermediate Unit*, 796 F. Supp. 849 (E.D. Pa. 1992); *Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947 (E.D. Cal. 1990). In each of these cases, parents turned to legal action in order to afford their children the right to take their emotional support or service animals to school. See *id.*

53. See *id.*; see also *Huss*, *supra* note 28, at 1189 (“Case law illustrates the need for clarification of the regulations.”).

54. See *supra* note 52 and accompanying text.

55. *Sullivan*, 731 F. Supp. at 948–49.

56. *Id.* at 951.

57. *Gaudiello*, 796 F. Supp. at 850.

58. *Id.*

59. *Id.*

60. *Id.*

the mental and emotional support the dog provided Michael.⁶² Ultimately, the court, relying on the 1992 ADA definition of “service animal” which did not recognize emotional support animals, found for the school district, noting that the school denied the parents’ request primarily because all of Michael’s physical needs were being met without his canine companion.⁶³

In short, because of the new type of service animal, an “[i]mpasse ensued” and “[c]onfusion reigned.”⁶⁴ People knew, or at least thought, that they should be allowed to bring their service animals with them wherever they wanted, but some locations, including schools, still resisted this notion because of the allegedly unique nature of the disabilities of the animals’ owners (i.e., the owners were not blind or deaf).⁶⁵ Furthermore, some people were using strange animals as service animals; though dogs were certainly still the majority species, it was not unheard of for special needs individuals to utilize the services of “rats and parrots and ferrets and llamas and iguanas and at least one snake (yes, really, a boa constrictor).”⁶⁶

C. *The Beginning of Change*

To end this reign of confusion regarding what a service animal actually is and where it is legally allowed, “the ADA definition of service animal [was] changed as a result of a revision made by the Department of Justice” in March of 2011; the statute went into effect in 2012.⁶⁷ This authoritative definition has dramatically changed the landscape of support animals and is widely considered a substantial victory for advocates of canine companions.⁶⁸ Furthermore, because this statute determines which

61. Later on in the process, Michael’s parents began highlighting the physical aspects of the dog’s service to Michael; one can assume this was to assuage the school district and be victorious in their suit. *See id.* Of importance here is that at the outset of the litigation, Michael’s parents clearly wanted the dog to attend school with Michael because of non-physical needs. *Id.*

62. *Id.*

63. *Id.* at 852–53.

64. Karen Ravn, *A Seeing-Eye Ferret? Now ‘Service Animal’ Defined More Narrowly*, L.A. TIMES (July 18, 2011), <http://www.latimes.com/health/la-he-service-cats-20110718,0,1184094.story>.

65. *Id.*

66. *Id.*

67. Adams & Rice, *supra* note 33.

68. *See* PAWS 4 AUTISM, http://paws4autism.org/Autism_servicedogs.html (last visited Oct. 13, 2012); SERV. DOG CENT., <http://servicedogcentral.org/content/node/256> (last visited Oct. 13, 2012); PSYCHIATRIC SERV. DOG SOC., <http://www.psychdog.org/index.html> (last visited Oct. 13, 2012).

animals are afforded public accommodations and legal protections, it effectively determines which animals are allowed in classrooms and which are not. As such, this statute deserves to be discussed and analyzed at length, paying particular attention to its scope, benefits, and limitations in the context of special education.

II. UNDERSTANDING THE ORIGIN, IMPACT, AND ANTICIPATED RESULTS OF THE NEW REGULATION

A. *The New Regulation on Service Animals*

As previously mentioned, because of the substantial confusion and resulting litigation concerning the exact definition of “service animal,” the federal government passed a new regulation to foster much needed clarification.⁶⁹ This regulation shifted the discussion into new territory and effectually changed the debate itself.⁷⁰ For purposes of this Comment, it is imperative to remember that this regulation determines what animals are welcome in public schools and which ones are not, for only “service animals,” as they are defined in this section, are allowed in the classroom.⁷¹ The relevant regulation states:

Service animal means any *dog* 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*. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks 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*. The crime deterrent effects of an animal’s presence and the

69. See 28 C.F.R. § 35.104 (2012).

70. Adams & Rice, *supra* note 33.

71. See Jacobs, *supra* note 31, at 1–2.

provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.⁷²

Before proceeding to an in-depth discussion on the benefits and potential shortcomings of the regulation, this Comment will address the relationship between this regulation and the Individuals with Disabilities Act (“IDEA”); then, it will make a few minor notes about the regulation’s goals and functions.

First, one may wonder why education-specific regulations are not controlling in this matter. That is, why does the Individuals with Disabilities Education Act not govern this discussion? Why are regulations that are promulgated by the Americans with Disabilities Act (“ADA”) the authoritative source for questions regarding service and support animals in schools? Of the two acts, the ADA is the only one to provide a definition of “service animal.”⁷³ However, the IDEA’s silence on the use and definition of service and support animals in schools does not mean that service animal accommodations are not affected by the IDEA.⁷⁴

For example, if a parent wishes to persuade a school to accommodate his child with special needs so that the child can bring her service animal to school, the parent will need to, using the ADA regulations as his authority, get the child’s IDEA-controlled Individual Education Plan (“IEP”) to allow for that accommodation.⁷⁵ Furthermore, the parent may be able to make a claim for such an accommodation under the notion that the service animal is a “related service” pursuant to the relevant IDEA regulation that states:

Related services means transportation and such developmental, corrective, and *other supportive services as are required to assist a child with a disability to benefit from special education*, and includes speech-language pathology and audiology services, interpreting services, *psychological services*, physical and occupational therapy, recreation, including

72. 28 C.F.R. § 35.104 (emphasis added).

73. Compare *id.*, with 34 C.F.R. §§ 300.4–45 (2012).

74. See generally SERV. DOG CENT., *supra* note 68, at <http://www.servicedogcentral.org/content/faq/62>.

75. *Id.* This is a necessary hurdle for the parents of special needs children because: The ADA generally applies to the public areas of schools. . . .

. . . .

If a parent wishes his or her child to attend public school with a service animal, the first step would be to add the service animal to the child’s IEP (Individual Education Plan), under IDEA (Individuals with Disabilities Education Act). If the school is not willing to permit the service animal, the parent(s) can appeal to the Department of Education.

Id. (citations omitted).

therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and *mobility services*, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.⁷⁶

Thus, the IDEA will undoubtedly come into play when students attempt to make a claim for a service animal accommodation in school.⁷⁷ However, the IDEA does not explicitly define “service animal,” and as such, affords them no explicit legal protection.⁷⁸ Herein lies the reason the ADA definition is so important: it does define what type of animals are afforded explicit legal protection in public places, and in doing so, determines what type of animals are allowed in public schools, despite the fact that the statute is not directly concerning school law.⁷⁹

Concerning the regulation’s goal, it sets out to accomplish a large task by defining the term “service animal” and the scope of its applicability.⁸⁰ At the outset, one can note the obvious: dogs are the only acceptable species of service animals.⁸¹ Interestingly though, later in the regulation, there is an exception for miniature horses.⁸² Apparently, they can be housebroken and their size is relatively the same as some of the larger breeds of dogs.⁸³ Furthermore, miniature horses apparently have a proven track record working with children with special needs.⁸⁴

Regarding the regulation’s functions, notice that it serves both a limiting function and an expanding purpose.⁸⁵ The regulation limits the

76. 34 C.F.R. § 300.34(a) (emphasis added). Perhaps a service animal could be classified as a psychological or mobility service.

77. See Jacobs, *supra* note 31, at 1, 5–6, 8.

78. See 34 C.F.R. §§ 300.4–45.

79. See 28 C.F.R. § 35.104 (2012). This also explains why the focus of this Comment is on the ADA definition—it is the only definition available. Whether the IDEA should include a similar definition is an important, albeit separate, discussion.

80. *Id.*

81. *Id.*

82. *Id.* at § 35.136(i)(1) (“A public entity 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.”).

83. Jacobs, *supra* note 31, at 3.

84. Adams & Rice, *supra* note 33.

85. See 28 C.F.R. § 35.104. Specifically, compare “[s]ervice animal means any dog 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

species of animals that can be used, but expands upon the types of special needs that can be served; no longer are service animals only for the blind, deaf, and mobility-restricted.⁸⁶ The regulation also lists a number of tasks that service animals can perform; this list, by its prefatory text, is meant simply to be exemplary, not exclusive.⁸⁷ Furthermore, the regulation notes that service animals are not guard dogs and guard dogs are not service animals.⁸⁸ Finally, the last sentence notes that animals providing “emotional support . . . comfort, or companionship” are “not . . . work[ing] . . . for the purposes of this definition.”⁸⁹ The merits and injuries of this final phrase, and of the entire regulation, will be discussed in detail herein.

B. The Positive Aspects of the New Regulation

There are a number of positive characteristics of the new regulation. First, as noted, the regulation does well to clarify which animals can and cannot act as “service animals.”⁹⁰ This, as previously discussed, was necessary to eliminate the aforementioned confusion that “reigned.”⁹¹ This will keep snakes, ferrets and iguanas out of school classrooms,⁹² which, even for proponents of those animals, is probably a good thing from a pragmatic perspective; dogs are not only the primary species of service animals, they are unquestionably the most effective because of their trainability, size, popularity, demeanor, and intelligence.⁹³ Recall Corbin, Carter’s companion dog, whose portable size, supreme intelligence, extensive training, and calming demeanor served to make him an excellent aid to Carter in a way that no other species conceivably could.⁹⁴

disability” with “[o]ther species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.” *Id.*

86. *See id.*

87. *Id.*

88. *See id.*

89. *Id.*

90. *See id.*

91. Ravn, *supra* note 64.

92. Dawinder S. Sidhu, *Cujo Goes to College: On the Use of Animals by Individuals with Disabilities in Postsecondary Institutions*, 38 U. BALT. L. REV. 267, 280 (2009).

93. Beth A. Danon, *Emotional Support Animal or Service Animal for ADA and Vermont’s Public Accommodations Law Purposes: Does It Make a Difference?*, 32 VT. B.J. 21, 23–24 (Summer 2006); *see also* SERV. DOG CENT., *supra* note 68, at <http://servicedogcentral.org/content/faq>.

94. *See* Kalbfleisch *ex. rel* Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4, 920 N.E.2d 651, 655–56 (Ill. App. Ct. 2009).

Second, the regulation ensures that service and support animals belonging to the deaf and blind will no longer be the exclusive recipients of legal protection; the regulation now protects service animals that serve individuals with a “physical, sensory, psychiatric, intellectual, or other mental disability.”⁹⁵ This inclusion is considered a major success for individuals with special needs.⁹⁶ For the first time in its history, the regulation explicitly recognizes and provides legal protection for service animals assisting those with psychiatric and intellectual disabilities; no longer does this type of service need to be implied.⁹⁷

Third, the regulation provides for many of the needs of children in special education; notice that within the exemplary list of tasks service animals may be called on to perform, the regulation includes “helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.”⁹⁸ According to Paws 4 Autism, a non-profit organization whose goal “is to bring Autism Service Dogs and related services, including community outreach and education, service dog awareness, informational training and social skills classes, to children who demonstrate autism spectrum behaviors,”⁹⁹ service dogs that are designed and trained specifically to assist children with Autism most often treat the following behaviors with the following responses:

- a. Impulse Running—dog is trained to retrieve child to adult.
- b. PICA—dog is trained to interrupt the behavior.
- c. Self-Stimulation—dog is trained to physically interrupt the behavior.
- d. Self-Harming—dog is trained to interrupt the behavior.
- e. Mood Swings—dog is trained to crawl onto child’s lap and calm child.
- f. Night Awakenings—dog is trained to alert parents by barking.
- g. Non-Verbal—dog enhances the verbal skills of the child by responding to verbal commands.
- h. Social Isolation—dog shifts the attention of those around him from his child to the dog.¹⁰⁰

95. 28 C.F.R. § 35.104 (2012).

96. *See generally* PAWS 4 AUTISM, *supra* note 68; SERV. DOG CENT., *supra* note 68; PSYCHIATRIC SERV. DOG SOC., *supra* note 68.

97. *See* 28 C.F.R. § 35.104; *cf.* 28 C.F.R. § 36.104 (1992) (illustrating the extremely limited scope of “service need” under the 1992 version of the regulation).

98. 28 C.F.R. § 35.104.

99. PAWS 4 AUTISM, *supra* note 68, at <http://paws4autism.org/>.

100. PAWS 4 AUTISM, *supra* note 68, at http://paws4autism.org/Autism_servicedogs.html; *see also* Jacobs, *supra* note 31, at 2.

Each of these behaviors and responses are not only the most common for a child with Autism, but the majority of them (the social isolation issue and response would probably not fall under the protective umbrella of the regulation's service animal definition) are also covered under the protective umbrella of the regulation as proper actions of a service animal.¹⁰¹ Recall Carter and Corbin—nearly all of Corbin's responses to Carter's behavior would fall very nicely under the section of the regulation that lists "preventing or interrupting impulsive or destructive behaviors" as one of the chores of a service animal.¹⁰² Sadly, the regulation does not account for all of the requirements of children with special needs. This problem will be discussed at length in the next section.

C. *The Negative Aspects of the New Regulation*

There are, unfortunately, a few damaging features of the new regulation. First, notice that the regulation requires that an animal be "individually trained to do work or perform tasks"¹⁰³ This phrase is unchanged from the previous versions of the regulation.¹⁰⁴ On the one hand, the requirement is a good thing.¹⁰⁵ Having untrained animals in schools or public places is not just unwise; it is a terrible idea that would undoubtedly lead to people getting hurt and schools getting sued. Thus, the regulatory requirement that each service animal have some sort of training is indisputably a very positive aspect of the regulation.

However, the regulation, like those in the years before it, does not require or provide for any type of formal certification, registration, or training.¹⁰⁶ As such, there is some latent ambiguity in the meaning of the word "trained."¹⁰⁷ Under the plain meaning of the regulation, a dog that

101. See 28 C.F.R. § 35.104. Note, however, that the "social isolation" behavior and response would probably not fall under the protective umbrella of the regulation's definition of "service animal." See *id.*

102. See *id.*

103. *Id.*

104. See 28 C.F.R. § 36.104 (1992).

105. See Sidhu, *supra* note 92, at 276. Sidhu notes:

Individual training is the one feature that helps distinguish between the service animals protected by Title III and other animals that fall beyond its reach. For example, a federal district court noted that "[t]here must . . . be something—evidence of individual training—to set the service animal apart from the ordinary pet."

Id. (internal citations omitted).

106. See *id.* at 282 n.84.

107. Danon, *supra* note 93, at 23. Danon states:

has been trained by a layman to pick up things that his master drops is essentially the same as a dog like Corbin that knows seventy vocal commands and has been trained to stop Carter from running away. By not requiring or even explaining some form of standardized, trustworthy certification regarding the animal's training, the new regulation fails to distinguish between these two types of animals. Such a failing is a problem that needs to be addressed.

Second, the phrase limiting service animals to those that "perform tasks," while seeming rather innocent, is no small matter; indeed, it runs the risk of effectively eliminating animals that do not really perform any specific "tasks."¹⁰⁸ For example, consider Nathan's story. Nathan is a high school student who suffers from Asperger's syndrome and used to experience very serious mental and emotional breakdowns in the middle of class.¹⁰⁹ Now, he has a support dog named Sylvia.¹¹⁰

Sylvia is a sweet-tempered yellow Lab who accompanies Nathan to school every day. . . .

Nathan used to be a target of bullying, but is less so now, he says. He strolls down the hallways, leash in hand, looking relaxed, sunglasses propped above his forehead. You would hardly know he has Asperger's syndrome, or that he sometimes has terrifying meltdowns in class. That's why Sylvia is here.

Of note is the fact that the regulation does not specify the amount or type of training an animal must have had to qualify as a service animal, nor does it specify the amount or type of work a service animal must provide for the disabled person. It does, however, specify that the animal must be trained and that it "do work or perform tasks" for the disabled individual. Furthermore, the regulations specifically state that the list of examples of the kind of tasks a service animal might provide for a disabled individual is not limited. Not surprisingly then, much of the litigation involving the waiver of no-pets policies for individuals with disabilities as a reasonable accommodation involves the skill level of the animal and the tasks it performs for the disabled individual.

Id. (internal citations omitted).

108. Kristin M. Bourland, Note, *Advocating Change within the ADA: The Struggle to Recognize Emotional-Support Animals as Service Animals*, 48 U. LOUISVILLE L. REV. 197, 201 (2009) ("Crucial to this definition is the requirement that a service animal be 'individually trained to do work or perform tasks.' If this requirement is not met, the animal is not a service animal under the ADA." (internal citations omitted)).

109. Larry Abramson, *Service Dogs Teach Educators About Disabilities*, NPR (May 14, 2011), <http://www.npr.org/2011/05/14/136287114/new-rules-look-to-educate-schools-on-service-dogs>.

110. *Id.*

“And when I feel the need to pet her,” he says, “I just sort of lean down and pet her. And sometimes, like when I get really stressed out—which doesn’t actually happen that often anymore—she’ll get on my lap.”

In history class, Nathan sits down, and Sylvia grabs a spot under his desk and chills. In a room full of high school sophomores, she is the calmest mammal there.

History teacher Doreen Pauley says Sylvia is just part of the class now. “If he needs her, she’s there; if he doesn’t, she’s just quiet. She’s a good dog.”¹¹¹

What “task” does Sylvia perform? One could make the argument that she actively calms her master, Nathan, when he gets stressed at school. But is that a task? One could just as easily make the argument that Sylvia is nothing more than an emotional support animal, not performing any actual, physical tasks at all and is thus excluded by the regulation.¹¹² Only a court can determinatively answer that question. As such, there is some latent ambiguity as to what a “task” actually is—yet another problem that demands a solution.

The third and somewhat similar problem with the regulation is the lack of accounting for the social and emotional benefits of a service animal.¹¹³ According to researchers, one of the greatest, though least obvious, benefits of service animals is their ability to positively affect the social lives of their masters.¹¹⁴ Children with special needs that have service animals often find themselves less of a target for ridicule and more of an object of acceptance; in common vernacular, most folks love dogs, and dogs bring out the best in people.¹¹⁵ Recall the story of Nathan and Sylvia. While Nathan used to be the object of bullying because of his mental and emotional breakdowns at school, Sylvia stopped all of that.¹¹⁶ Not only did she help Nathan stop having breakdowns, she also significantly improved his social life by giving him an identity beyond his condition, and by taking away much of the negative attention he was receiving from his peers.¹¹⁷

111. *Id.*

112. *See* 28 C.F.R. § 35.104 (2012).

113. *See id.*

114. *See generally* PAWS 4 AUTISM, *supra* note 68; SERV. DOG CENT., *supra* note 68; PSYCHIATRIC SERV. DOG SOC., *supra* note 68.

115. *Id.*

116. Abramson, *supra* note 109.

117. *Id.*

Furthermore, the emotional benefits of a service animal are substantial and supported by research,¹¹⁸ yet they are sadly not included in the regulation. In fact, they are affirmatively attacked when the regulation notes that “the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”¹¹⁹ This is perhaps the greatest problem with the regulation as it is currently constructed.¹²⁰ Many children with special needs are currently

118. See Huss, *supra* note 28, at 1177–79; see also Bourland, *supra* note 108, at 205–07.

119. 28 C.F.R. § 35.104 (2012).

120. Huss, *supra* note 28, at 1177–79. Though not concerning the most current regulations, Huss discusses this issue in great detail as follows:

Closely related to the language regarding the training and purpose of the service animal is the DOJ’s formalization of its position on “emotional support/comfort” animals. The DOJ’s addition of the text stating that the term service animal “includes individually trained animals that do work or perform tasks for the benefit of individuals with disabilities, including psychiatric, cognitive, and mental disabilities” was intended to clarify its position that emotional support animals are excluded from ADA coverage.

The DOJ stated that “[a]nimals whose sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or promote emotional well-being are not service animals.” The DOJ recognized that other federal agency regulations, for example, in the areas of housing and air travel, may provide for increased access for animals that would not meet the DOJ’s definition of service animals.

As with the other changes that would effectively narrow the coverage of service animals under the rules, as illustrated by the public comments, many advocates for persons with disabilities disagree with the DOJ’s position on emotional support animals. Some of the public comments focused on the definition of “work,” stating that “the [a]ctive provision of comfort and/or emotional support to a qualified individual with a disability whose disability results in an inability to self-soothe or de-escalate and control emotions is ‘work’ that benefits the individual with the disability and should be recognized as such.” Another comment focused on the connection between the animal and the therapeutic effect on a disability.

Another objection to the exclusion of emotional support animals focused on the lack of individualized inquiry that the ADA requires. In addition, several commentators articulated that the proposed exclusion would lead to increased discrimination against individuals with non-apparent disabilities because of the difficulty in distinguishing between psychiatric service animals and emotional support/comfort animals.

There were some public comments supporting the clarification to exclude emotional support animals. There is concern by some service animal organizations that providing for emotional support animals to be covered under the ADA would undermine the right to more traditional service animals. In this

being served on a purely emotional level by “companion” and “support” animals, yet these canine companions are not provided with legal protection in the regulation, and thus are not welcome in public school classrooms.¹²¹

Consider Floyd, a golden retriever, and her master Luke, a child with autism.¹²² One of Floyd’s primary responsibilities is to provide Luke with emotional support to keep Luke emotionally stable throughout the day; Floyd does this job excellently, and as a result, has dramatically improved the quality of Luke’s life.¹²³ If this were Floyd’s only task, that is, if Floyd did not also open doors for Luke and help Luke carry his books, Floyd may not be allowed to accompany Luke to school, and Luke’s serious emotional needs would go unmet when Floyd was not with him.

Next, take note of Noah and his dog Fern.¹²⁴ “Noah has Autism, Alfi syndrome, and an auditory processing disorder[.]”¹²⁵ Before meeting Fern, a golden retriever, Noah could not successfully attend just “a few hours in a life skills program at his school[.]”¹²⁶ Since Fern and Noah have started working together, Noah has become integrated into a general education classroom for the first half of every day.¹²⁷ Fern performs a number of physical tasks for Noah, which is why he is allowed in Noah’s classroom; yet Fern is also tasked with emotionally supporting Noah.¹²⁸ Luckily, this is not all Fern does; if it was, Fern would not be allowed in Noah’s classroom because he would be there solely for “emotional support.”

Finally, consider the touching account of Justin and Flopsy.¹²⁹ Justin is a very special young boy with Autism.¹³⁰ Flopsy is yet another very

regard, some commentators focus on the distinction between task trained animals and animals that do not perform tasks.

Id. (emphasis added) (internal citations omitted).

121. *Id.*; see also Bourland, *supra* note 108, at 205 (“Opposition to DOJ’s proposal clearly exists. Numerous organizations, for example, abhor DOJ’s decision to expressly exclude emotional-support animals as service animals.” (citation omitted)).

122. *2011 Accomplishments*, AUTISM SERV. DOGS OF AM., (Dec. 28, 2011, 10:12 PM), <http://autismservicedogsofamerica.com/news/2011-accomplishments/>.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

special golden retriever.¹³¹ The success of their heartwarming relationship deserves lengthy quotation:

Flopsy has definitely helped Justin tremendously when she came into our family in late May 2011. She has all the great skills of a service dog, but it's the *emotional connection that really seemed to benefit Justin*. She is so calm and loving that she can almost *sense when Justin is feeling distressed* or will become anxious during an activity that's challenging for him. She will nudge right up to him so he can give her squeezes, rub his feet on her back, or bury his face in her soft fur until he's grounded. *The companionship has helped Justin become more social and will now engage other kids to play with him*. Before it was just his brother he would play with, and we are seeing small, baby steps in engaging other kids to play with him.¹³²

This passage really needs little commentary; suffice it to note that while Flopsy was purchased to be a "service animal" for her master, Justin, she was most helpful as an emotional support animal, calming Justin down and opening up his very first social relationships with other children.¹³³ Sadly, Flopsy may not be protected by the regulation concerning service animals if she does not provide Justin with anything more than emotional and social support.

It could be argued that these animals are performing a task for their masters; however, if the animal is not providing any benefits beyond the emotional realm, the regulation provides them no explicit legal protection. Needless to say, the lack of legal protection afforded to purely emotional support animals is a very serious problem with the regulation—one that requires a remedy.¹³⁴

131. *Id.*

132. *Id.* (emphasis added).

133. *Id.*

134. The substantial emotional benefits of service animals are well documented. *See* Bourland, *supra* note 108, at 205–07. Bourland expands on the benefits of emotional-support animals in stating:

Numerous studies show that emotional-support animals offer a variety of benefits to individuals with mental or psychiatric impairments. As one organization, The Arc of the United States and United Cerebral Palsy, stated:

[Emotional-support] animals perform a variety of critical functions that accommodate the needs of many individuals with psychiatric disabilities, including alleviating symptoms of post traumatic stress disorder, anxiety disorders and panic disorders by calming the handler and reducing physical and mental effects such as anxiety, fear, flashbacks, hyper vigilance, hallucinations, intrusive imagery, nightmares, muscle tension, trembling, nausea, and memory loss.

D. Possible Changes and Remedies to Solve the New Regulation's Problems

There are, perhaps, a few things that could be done to alleviate the aforementioned negative effects of the regulation. First, there could be an easy way of establishing some sort of standardized certification method so that there is a difference between an animal that has been trained by a random layman, and an animal that has been trained by a long-standing, well-respected organization.¹³⁵ Undoubtedly there are substantial costs

The benefits of emotional-support animals are far-reaching. Evidence shows that emotional-support animals help depressed individuals by getting them out of bed to go to work or to interact with others. Patients with psychotic, mood, and other disorders have reduced their anxiety by using emotional-support animals. Emotional-support animals have also benefited individuals who suffer from Alzheimer's or dementia. One study found that nursing-home patients who had emotional-support animals decreased their dependence on psychotropic drugs. Additionally, other studies have shown that animal-assisted therapy aids in treating children who suffer from autism and attention deficit disorder.

Besides the above-mentioned studies, the testimony of medical experts in numerous cases also demonstrates the benefits of emotional-support animals to individuals with mental disabilities rising to the ADA's coverage threshold. As a doctor in one case wrote, "[the plaintiff] is at risk of deteriorating social function. . . . With the assistance of a companion animal, [the plaintiff] will be able to function and manage the symptoms of his disability and functional impairment." In another case, a doctor testified that the plaintiff had "anxiety and chronic major depression recurrent and stated that these conditions substantially limited claimant's ability to work and to sleep," and that plaintiff's emotional-support animal "kept her afloat and stabilized her functionally and emotionally . . . without the dog she would probably spend most of her life in bed." Caring for the dog ameliorated the plaintiff's condition by providing her with structure, and without the dog she would undoubtedly go into a "depressive tail spin and get worse."

In yet a third case, a psychiatrist testified that a person's two birds and two cats lessened the effects of that person's severe mental disabilities by providing companionship.

Id. (internal citations omitted).

135. Huss, *supra* note 28, at 1175–76. Huss highlights:

Although the DOJ did not propose to change the language "individually trained," it received comments on this terminology. Some commentators have proposed that the DOJ adopt behavior or training standards to enable the public to differentiate between service animals and pets. These training comments would also be applicable to the issue of allowing for species other than dogs to act as service animals. The recommendation for training was often tied to the service animal performing a task.

Id. (internal citations omitted).

involved when patronizing one of these institutions,¹³⁶ but there are also substantial and significant governmental interests in having service animals that are properly trained. One can imagine the safety and liability issues involved. Suffice it to say that there are substantial governmental interests in ensuring that every animal that is classified as a service animal is one that is appropriately trained by respected, established individuals.

Second, the word “tasks” should be expanded or eliminated so that dogs like the aforementioned Sylvia, who may or may not perform any actual “tasks” when their owners are at school, can still accompany their young masters in public and into the classroom. As previously discussed, some of the most effective assistance that these animals provide has nothing to do with the performance of a particular “task.”¹³⁷ For example, the regulation could include in the list of tasks: (1) providing emotional support for individuals with mental or developmental disabilities; (2) helping individuals with social disabilities; and (3) providing a calming influence for individuals prone to emotional breakdowns.

Finally, the regulation must eliminate its language affirmatively attacking the emotional and social aspects of service animals. Children like Luke, Noah, and Justin should be able to bring their dogs to school under the same protections afforded to typical, task-performing service animals. The benefits to the children are far too great to lose. Furthermore, the animals that would be allowed in schools by such a provision would require the same amount of training as their typical, task-performing counterparts.¹³⁸ Additionally, they would be no more of a burden or

136. PAWS 4 AUTISM, *supra* note 68, at <http://autismservicedogsofamerica.com/families/costs/> (“The full cost to breed, raise and train an ASDA service dog can range from \$15,000 to \$20,000.”).

137. Huss, *supra* note 28, at 1176–77. Huss illustrates the issues surrounding this “work” or “task” requirement in stating:

The DOJ received many comments on the language relating to individual training to “do work or perform tasks” that was in the existing regulations. Some commentators recommended that the language “do work” be eliminated from this definition. An example is the comment by the Guide Dog Foundation for the Blind, Inc. (GDFB) that cited to a prior DOJ interpretive guidance document that excluded the phrase from the definition of a service animal. The GDFB focused on task training as being fundamental to the definition of a service animal. The GDFB raised concerns that the interpretation of “work” could be a nonphysical form of assistance and would “further confuse the distinction between service animals and pets.”

Id. (internal citations omitted).

138. See generally PAWS 4 AUTISM, *supra* note 68; SERV. DOG CENT., *supra* note 68; PSYCHIATRIC SERV. DOG SOC., *supra* note 68.

imposition on schools and the general public.¹³⁹ Emotional support animals are not intrinsically more likely to cause allergic reactions in other human beings, nor are they at all more likely to frighten those individuals who are already afraid of dogs.¹⁴⁰ In short, emotional support dogs are just as much dogs as ordinary, task-performing service dogs.

Perhaps the worry is that if emotional support animals were welcomed into classrooms, all manner of individuals would attempt to bring their pets to class, even if they were only suffering from a minor emotional, mental, or learning disorder.¹⁴¹ This argument fails for a few reasons. First, the possibility of abuse should never be the reason that a prudent and necessary step is avoided; nearly all privileges can be abused, but that is not a valid justification for their elimination. Second, a carefully drafted regulation with specific procedures that provide ample accountability could eliminate any such potential abuses. For example, the regulation could require any emotional support animals to be approved by a licensed expert, or it could limit the use of emotional support animals to individuals with a prescription.¹⁴² Finally, when walking the rather fine line between over-inclusion of service animals and over-exclusion of the same, let us err on the side of over-inclusion in light of their tremendous benefits and relatively minor harms.¹⁴³

CONCLUSION

Dogs have given us their absolute all. We are the center of their universe, we are the focus of their love and faith and trust. They serve us in return for scraps. It is without a doubt the best deal man has ever made.

~ Roger Caras

The rights and accommodations that have been afforded to children

139. See Huss, *supra* note 28, at 1215.

140. See *id.*

141. Bourland, *supra* note 108, at 204. Bourland highlights:

DOJ is reluctant to recognize emotional-support animals as service animals because of its belief that “some individuals with impairments—who would not be covered as individuals with disabilities—are claiming that their animals are legitimate service animals, whether fraudulently or sincerely (albeit mistakenly), to gain access to public accommodations.

Id. (internal quotations and citations omitted).

142. This ties in well with the aforementioned suggestion regarding uniformity in training and registration of service animals.

143. See Bourland, *supra* note 108, at 204–05.

with disabilities who benefit from the services and support of the miraculous service animals in America have grown exponentially over the past several years. Thanks to recent regulatory adaptations, more protection has been provided for children with service animals than ever before, and these canine companions are now standing shoulder to shoulder with their no-less-impressive cousins assisting the blind and hearing impaired. Yet, there is still a lot of work to do. Emotional support animals assisting children like Luke, Noah, and Justin need to be afforded just as much legal protection from discrimination as their task-performing canine counterparts. When this occurs, children with special needs will finally have the help that they so desperately need and that these miraculous animals can so readily provide.

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