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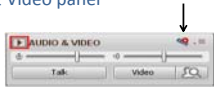
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2

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4

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5

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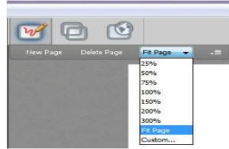
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6

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7

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8

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9

Service Animals:

Exploring the Rights of Persons with Disabilities To be Accompanied by Service Animals In Public Accommodations

July 16, 2014

Elaine Roberts, J.D., Executive Director
Montgomery County Dispute Resolution Center

Denette Vaughn, Senior Attorney
Disability Rights Texas

Who is Bootz?



Photo provided by the Office of Texas State Representative Jose Merendez

11

Statutes

- 1) Americans with Disabilities Act
- 2) Section 504 of the Rehabilitation Act
- 3) Fair Housing Act
- 4) Air Carrier Access Act
- 5) IDEA (for schools)
- 6) Texas Human Resources Code, Chapter 121
- 7) Texas Health & Safety Code, Section 437.023

12

Our Focus

- ADA Title II - Public Services (government), 42 USC Chapter 126, Title II
- ADA Title III - Public Accommodations and Services, 42 U.S.C. 12182
- Chapter 121 Texas Human Resources Code
- Chapter 437 Texas Health & Safety Code

13

Title II of the ADA

- Applies to "public entities" such as:
 - state or local government offices
 - special purpose districts or "instrumentalities of the state"

14

Title II and Title III of the ADA

- Prohibit discrimination in:
 - services
 - programs
 - activities
- Require modification of policies/procedures when necessary to prevent discrimination
- Includes allowing persons with disabilities to enter/utilize service animals

15

Title III of the ADA

- Refers to “private entity”
 - generally any entity other than a public entity;
 - except does not apply to religious organizations or private clubs

ADA , Title III, Section 12181(6)

16

Title III of the ADA

• Private entity includes such places as:

- lodging establishments;
- food establishments;
- theaters & stadiums;
- stores & public businesses;
- hospitals & pharmacies;
- lawyers' offices & doctors' offices.

17

Types of Animals

- Only dogs
- “Other species of animals ...are not service animals for the purpose of this definition.”
- Some exception for miniature horses
 - 28 CFR § 36.602
 - 28 CFR § 35.136(i)(A)

18

Definition of Service Animal

- “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.”
- Title II 28 CFR 35.104
- http://www.ada.gov/regs2010/titleII_2010_integrated.htm
- Title III 28 CFR 36.104
- http://www.ada.gov/regs2010/titleIII_2010_integrated.htm

19

Work or Tasks

- “The work or tasks...must be directly related to the handler’s disability.”
 - Title II 28 CFR 35.104
 - Title III 28 CFR 36.104
- Does not require “formal” training or vest/markings
- Not breed specific (size does not matter)

20

Work or Tasks

- Examples include:
 - Guiding an individual who is blind or has low vision;
 - Pulling someone’s wheelchair;
 - Retrieving items;
 - Assisting with balance and stability;
 - Providing alerts and assistance to someone who experiences seizures;
 - Assisting individuals with PTSD or other psychiatric disabilities to remain calm;
 - Carrying medication or alerting when it is time to take medication;
 - Alerting someone with diabetes when blood glucose levels rise significantly;
 - Alerting someone who is deaf or hard of hearing to alarms or the presence of others.

21

Modifications In Policy, Practice or Procedure

- A public entity *shall* make *reasonable* modifications;
- in *policies, practices, or procedures* when the modifications are necessary to avoid discrimination on the basis of disability;
- unless the public entity can demonstrate that making the modifications would *fundamentally alter* the nature of the service, program, or activity.
- 28 CFR 35.130(7) - public entity
- 28 C.F.R. § 36.302(a) - public accommodation
- http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_integrated.htm

22

Allowable Inquiries

- A public entity or public accommodation may ask **only 2 questions:**
 - if the animal is required because of a disability and
 - what work or task the animal has been trained to perform.
- 28 CFR 36.302

23

Improper Inquiries

- The business **shall not ask about the nature or extent of a person's disability.**
- The business **shall not require documentation**, such as proof that the animal has been certified, trained, or licensed as a service animal.

24

Improper Inquiries

- Generally, the business **should not make inquiries if it is readily apparent** that an animal is trained to do work or perform tasks
- Examples:
 - the dog is observed guiding an individual who is blind or has low vision;
 - pulling a person's wheelchair;
 - providing assistance with stability or balance to an individual with an observable mobility disability.
- 28 CFR 35.136 -public accommodation
- 28 CFR 36.602

25

Handler's Obligations

- A service animal shall be **under the control** of its handler via harness, leash or tether **unless** handler not able to use because of disability, or
- Harness, leash or tether would interfere with the service animals safe performance of task.
- Alternative: voice control, signals, or other effective means
- Service animal must be housebroken
- 28 CFR 35.136(d) - public entity
- 28 CFR 36.302(c)(4) - public accommodation

26

Miniature Horse Modifications

- **Not a service animal** under the definition
- Reasonable modifications must be made to allow the use of a miniature horse that has been individually trained to do work or perform tasks for the benefit of the individual with a disability
- Title II 28 CFR § 35.136
- Title III 28 CFR § 36.302

27

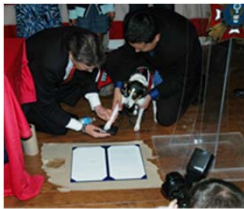
Miniature Horse 4 Assessment Factors

- miniature horse's **type, size, and weight** and whether the **facility can accommodate** these factors;
 - whether the handler has **sufficient control**;
 - whether the miniature horse is **housebroken**; and
 - whether the miniature horse's presence at a specific facility **compromises the legitimate safety requirements** that are necessary for safe operation.
- 28 CFR § 35.136(i)(A)
- 28 CFR § 36.302(c)(9)(i)

28

HB 489 Boitz Signs the Bill

<http://www.kens5.com/news/Gov-Perry-signs-measure-to-allow-all-service-dogs-inside-businesses-210635631.html>



29

Boitz's Law Modified Existing Statutes

- Chapter 121 of the Texas Human Resources Code, as modified by HB489 in June 2013
- § 437.023 Texas Health and Safety Code added by HB 489 in June 2013

HB 489 effective January 1, 2014

Early News Story: <http://www.kens5.com/news/Wounded-Warrior-Sues-Local-SA-Business-175535981.html>

30

Chapter 121 Texas Human Resources Code Service Animal Definition

- “Assistance animal” and “service animal” mean a **canine** that is **specially trained or equipped** to help a person with a disability that is used by a person with a disability.
 - Texas Human Resources Code § 121.002(1)
- Emotional support animals are not service animals

31

Chapter 121 Texas Human Resources Code Person with a Disability

Person with a disability means a person who has:

- A) a mental or physical disability;
- B) an intellectual or developmental disability;
- C) a hearing impairment;
- D) deafness;
- E) speech impairment;
- F) visual impairment;
- G) **post-traumatic stress disorder**; or
- H) any health impairment that requires special ambulatory devices or services.

Texas Hum. Res. Code § 121.002(4)

32

Chapter 121 Texas Human Resources Code Public Facility - Section 121.002(5)

- Public facility includes:
 - Highway, sidewalk, walkway;
 - Common carriers and public transportation;
 - Places of lodging;
 - A public buildings maintained by the government;
 - Retail businesses;
 - Educational facilities;
 - Restaurant & food establishments;
 - Places of amusement, convenience or resort to which the public is invited.

33

Chapter 121 Texas Human Resources Code
Section 121.003

- (b) cannot be required to pay an additional fare because of his or her use of a service animal;
- (d) cannot refuse admission because of service animal;
- (h) cannot be denied full and equal access to housing or be charged more or a housing deposit for a service animal;
- May be required to pay for damages done by service animal.

34

Chapter 121 Texas Human Resources Code
Section 121.003

- (i) A **service animal** in training shall not be denied admittance to any public facility when accompanied by an approved trainer.
- (j) A person **may not assault, harass, interfere with, kill, or injure** in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal.

35

Chapter 121 Texas Human Resources Code
Section 121.003

- (k)(1) If a person's disability is not readily apparent the entity may ask **only two questions**:
 - (1) whether the service animal is required because the person has a disability; and
 - (2) what type of work or task the service animal is trained to perform.

36

Chapter 121 Texas Human Resources Code
Section 121.004(a) - Criminal Penalty

- (a) violation of Section 121.003 is a **misdemeanor** punishable by:
 - (1) a **fine** of not more than \$300
 - (2) 30 hours of **community service**...to be completed in not more than one year

37

Chapter 121 Texas Human Resources Code
Section 121.004(b) - Civil Penalty

- A violation of Section 121.003 is **deemed to have deprived** a person with a disability of his or her **civil liberties**.
- The person with a disability may file a lawsuit
- Presumption of damages of at least \$300

38

Chapter 121 Texas Human Resources Code
Section 121.006(a)-False Representation

- Falsely representing an animal as a service animal "when training has not in fact been provided" is a **misdemeanor**.
- Punishment:
 - (1) a **fine** of not more than \$300, and;
 - (2) 30 hours of **community service**...to be completed in not more than one year.

39

Texas Health & Safety Code
Section 437.023 - Food Establishments

- A food service establishment, retail food store or other entity
- May not deny a service animal admittance
- Into an area of the establishment or store
- Occupied by the entity that is open to customers
- And is not used to prepare food *IF*:
 - (1) service animal is accompanied and controlled by a person with a disability; or
 - (2) service animal is in training and is accompanied and controlled by an approved trainer.

40

Texas Health & Safety Code
Section 437.023(b) - Food Establishments

- Only two inquiries are allowed:
 - (1) whether the service animal is required because the person has a disability; and
 - (2) what type of work the service animal is trained to perform.

41

Texas Health & Safety Code
Section 437.023(c) -definition

- Service animal means:
 - A canine
 - Specially trained or equipped to help a person with a disability.
 - Does not include an animal that provides only comfort or emotional support

42

Texas Health & Safety Code Section 437.023(c) -Tasks

- **Tasks** may include:
 - Guiding a person who has a visual impairment;
 - Alerting a person who has a hearing impairment or who is Deaf;
 - Pulling a wheelchair;
 - Alerting and protecting a person who has a seizure disorder;
 - Reminding a person who has a mental illness to take prescribed medication; and
 - **Calming a person who has post-traumatic stress disorder.**

43

Options to Resolve

- Lawsuit
 - ADA: injunctive relief & attorneys' fees (no damages in private suit)
 - Chapter 121 Tx.Hum.Res.Code: injunctive relief & damages (no attorneys' fees)
- Administrative Complaint (DOJ)
- Mediation

44

Mediation

- Informal process
- Trained, impartial person (mediator)
- Helps disputing parties to communicate
- And find mutually satisfactory solutions
- To their differences
- Mediator **MAY NOT** impose judgment on issues
- Confidential process
- Tex. Civ. Prac. & Rem. Code Section 154.023

45

Benefits of Mediation

- Quicker
- Cheaper
- Both parties control the process and outcome of mediation
- Preserves or restores relationships between the parties
- Empowering to both parties
- Opportunity to alter perceptions and change attitudes
- Systemic change/improvement possible
- Maintains confidentiality
- Excellent success rate

46

Examples of Mediated Settlement Agreements

- Changes in service animal screening and admittance policies/procedures at the facility and/or to all chain/franchise locations
- An apology was issued to complaining party
- Welcome signs added for patrons with service animals
- Donations to animal shelters and/or service dog organizations
- Article on service animal requirements in local newspaper
- Payments to the individual and/or DOJ

47

Accessing Mediation

- Private mediations
- DOJ-Keybridge Foundation Mediations
- Alternative Dispute Resolution Centers

48

Mediation Options

- Private Mediators
 - Varying Rates for Mediation;
 - Varying Expertise/Experience Dealing with disabilities;
 - Check organizational listings, credentialing.
- DOJ/Keybridge Foundation Mediations -free of charge;
 - Specify you are seeking mediation;
 - Include all issues to be mediated in complaint;
 - Initiate with complaint/request for mediation to DOJ;
 - 400 trained ADA mediators nationwide;
 - Over 75 % success rate;
 - Maintains involvement until compliance completed.

49

Alternative Dispute Resolution Centers

- Private non-profits and governmental entities;
- Promotes state policy for early settlement of pending litigation and encouragement of "peacable resolution";
- Free or low cost mediations;
- Training and experience with addressing disability issues vary.
- Tex. Civ. P. & Rem. Code Section 154.002, *et seq*

50

Common Factors in Mediation

- Mediators will be covered by either Title II or III of ADA so must generally provide reasonable modifications, accommodations, and/or auxiliary aids and services to persons with disabilities;
- Confidential process - mediators cannot be subpoenaed;
- Address question of how to implement legal requirements;
- Not prejudicial to litigation and/or administrative process.

51

Additional Reference Sources

- Keybridge Foundation Center for Mediation, <http://keybridge.org> or 202.274.1822
- DOJ ADA Website www.ada.gov or ADA Information Line at 800.514.0301 and 800.514.0383 (TTY)
- State Bar of Texas Disability Issues Committee
- 19 minute State Bar of Texas, Bootz's Law Video <http://www.youtube.com/watch?v=yMHIf7Mc7q0>

52

Additional Reference Sources

- Disability Rights Texas, <https://www.disabilityrightstx.gov> or 800.252.9108 or 800.362.2851 (video);
- Southwest ADA Center at ILRU, 800.949.4232 (AR, LA, NM, OK, TX);
- Alternative Dispute Resolution Centers of Texas, www.courts.state.tx.us/pubs/JudicialDirectory/DispresCtrs.pdf

53

Contact Information

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- Elaine B. Roberts, elaine.roberts@mctx.org

54

THANK YOU FOR YOUR ATTENTION AND
THANKS TO BRAVE WOUNDED WARRIORS,
DISABILITY ADVOCATES,
ANIMAL ADVOCATES, AND
BOOTZ
FOR MAKING PROGRESS POSSIBLE

55



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56



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"Websites and the ADA: Accessibility in the Digital Age"

September 22, 2014

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57
