

STETSON UNIVERSITY COLLEGE OF LAW
SPECIAL NEEDS TRUSTS 2009

**CAN MY SPECIAL
NEEDS TRUSTEE BUY
ME A DOG?**

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CAN MY SPECIAL NEEDS TRUSTEE BUY ME A DOG?

One of the oft-stated purposes of a special needs trust is to “improve the quality of life of the beneficiary.” While it sounds altruistic, this purpose encompasses two of the basic fiduciary duties of trustees established by law: duty to administer the trust (*Restatement 2d* Trusts §169, UTC §801) and loyalty to the beneficiary (*Restatement 2d* Trusts §170, UTC §802). Trustees of SNTs have the opportunity, depending on the size of the trust, to purchase and/or maintain things that will provide enjoyment of life, assistance with daily activities, and the means by which the beneficiary can interact with the world around her. In fulfilling the fiduciary duties to administer the trust for the sole benefit of the beneficiary, the trustee should seek services and purchases that will provide significant benefits for the disabled beneficiary. For a variety of types of disabilities, a service animal can be a life-changing benefit.

Not all trained animals are service animals. Animals with training beyond basic pet obedience may be therapy animals, skilled companion animals, or skilled service animals. (Reference in this paper to “assistance” animals includes skilled companion and skilled service animals.) Because of their availability, adaptability and ease of training, dogs are overwhelmingly used as therapy and assistance animals (and this author will often use the term “dog” to refer to a service animal throughout this paper). Let’s review some background about these different types of non-human helpers and the distinctions.

A. Therapy Dogs

Wikipedia states that a “therapy dog” is a dog trained to provide affection and comfort to people in hospitals, retirement homes, nursing homes, mental institutions, schools, and stressful situations such as disaster areas. Therapy dogs come in all sizes and breeds. The most important characteristic of a therapy dog is its temperament. A good therapy dog must be friendly, patient, confident, at ease in all situations, and gentle. Therapy dogs must enjoy human contact and be content to be petted and handled, sometimes clumsily, by children and adults in various types of settings.

A therapy dog's primary job is to allow unfamiliar people to make physical contact with it and to enjoy that contact. Children in particular enjoy hugging animals; adults usually enjoy simply petting the dog. The dog might need to be lifted onto, or climb onto,

the lap or bed of a person with a disability and sit or lie comfortably there. Many dogs contribute to the visiting experience by performing small tricks for their audiences or by playing carefully structured games. "Pet Therapy" is a more inclusive term for the use of "therapy dogs", or other "therapy animals" such as cats and rabbits to minister to children and adults in these ways.

History of the Therapy Dog

During World War II, under combat operations against Japanese forces on the island of New Guinea, an American soldier found a young adult Yorkshire Terrier abandoned on the battlefield. Corporal William Wynne took the female "Yorkie" and named her Smoky. Smoky's small size enabled her to become a hero by helping engineers to build an airbase at Lingayen Gulf, Luzon, a crucial airfield for Allied aircraft. Early in the Luzon campaign, the Signal Corps needed to run a communication wire through a 70-foot long pipe that was eight inches in diameter. The pipe passed beneath the landing strip. Dirt had fallen through the corrugated pipe, filling as much as half of the pipe, giving Smoky only four inches of headway in some places. Wynne tied a string (itself attached to the communication wire) to Smoky's collar and ran to the other end of the pipe and called Smoky. The little Yorkie crawled her way along the 70-foot long pipe into the arms of Corporal Wynne. Smoky's work prevented the need to move 40 fighter aircraft while a construction detail dug up the taxiway. This would have placed them in jeopardy from enemy air bombardment. What would have been an extended construction job, was accomplished by this little dog in minutes.

Her service as a therapy dog began when Corporal Wynne was hospitalized for a jungle disease. As Wynne recovered, Wynne's Army pals brought Smoky to the hospital for a visit and to cheer the soldiers up. Smoky immediately became a hit with the other wounded soldiers. Dr. Charles Mayo, of the famed Mayo Clinic, was the commanding officer who allowed Smoky to go on rounds and also permitted her to sleep with Wynne in his hospital bed for five nights. Smoky's work as a therapy dog continued for 12 years, during and after World War II.

The establishment of a systematic approach to the use of therapy dogs is attributed to Elaine Smith, an American who worked as a registered nurse for a time in England. Smith noticed how well patients responded to visits by a certain chaplain and his canine

companion, a Golden Retriever. Upon returning to the United States in 1976, Smith started a program for training dogs to visit institutions. Two of the largest therapy dog organizations – Therapy Dog International (TDI, Inc., www.tdi-dog.org) and Delta Society (www.deltasociety.org) – were founded in 1976 and 1977, respectively. Over the years other health care professionals have noticed the therapeutic effect of animal companionship, such as relieving stress, lowering blood pressure, and raising spirits, and the demand for therapy dogs continues to grow. In recent years, therapy dogs have been enlisted to help children overcome speech and emotional disorders, and to relieve stress suffered by children and adults as the result of mass disasters such as hurricanes. The concept has widened to include other species, such as therapy cats, therapy rabbits, therapy birds and so on.

Classification of Therapy Dogs

Therapy dogs are not service or assistance dogs. Service dogs directly assist humans, and have a legal right to accompany their owners in most areas. In the United States, service dogs are legally protected at the federal level by the Americans with Disabilities Act of 1990. Therapy dogs do not provide direct assistance and are not mentioned in the Americans with Disabilities Act. Institutions may invite, limit, or prohibit access by therapy dogs. Therapy dogs, unlike assistance dogs, are not allowed in public accommodations or public transportation unless invited by those in authority. If allowed, many institutions have rigorous requirements for therapy dogs.

Many organizations provide testing and accreditation for therapy dogs. These include, among others, Therapy Dog International (www.tdi-dog.org) and Love on a Leash (www.loveonaleash.org). Most require that a dog pass the equivalent of the American Kennel Club's Canine Good Citizen test, and then add further requirements specific to the environments in which the dogs will be working. Typical tests might ensure that a dog can handle sudden loud or strange noises, can walk on assorted unfamiliar surfaces comfortably, are not frightened by people with canes, wheelchairs, or unusual styles of walking or moving, get along well with children and with the elderly, and so on. The two organizations listed provide liability insurance coverage for the dog's activities once the animal has passed the testing and certification process.

B. Service Animals

[from “A Brief Information Resource on Assistance Animals for the Disabled” compiled by Kristina Adams, MS and Stacy Rice, Animal Welfare Information Center, U.S.

Department of Agriculture; August 2003 (Updated April 2004)

Providing for the health of humans through animal interactions dates back many centuries. As an example, horseback riding is mentioned throughout history as a cure for various sicknesses including gout, neurological disorders and depression. Today, animals provide therapeutic benefits to humans with physical and mental illnesses as well as provide assistance to people with disabilities.

The most commonly recognized assistance animals are dogs. Due to their social nature, dogs are wonderful pets, companions, and protectors. Dogs work closely with people in a variety of areas including law enforcement, search and rescue, and farming. As assistance animals, dogs provide help for the visually and hearing impaired, serve as an alert system for impending seizures, and offer additional strength and mobility for the physically disabled. Dogs also provide comfort for people suffering emotional difficulties. There are many other animal species that provide therapeutic benefits to people. The Americans with Disabilities Act (ADA) specifically defines a service animal as a “guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.” Some of these “other animals” that assist people with disabilities are monkeys, birds, pigs, and horses. An even greater number of animal species serve as therapy animals, including rabbits, hamsters, and snakes.

This information resource was created in response to many of the questions the Animal Welfare Information Center receives about the laws relating to assistance animals. This document serves as a starting point in learning about types of assistance animals, the services they provide and the laws that affect them. Many specific questions are answered in a document created by the Civil Rights Division of the U.S. Department of Justice and the National Association of Attorneys General Disability Rights Task Force - <http://www.usdoj.gov/crt/ada/animal.htm>.

Although many service animals wear special collars or harnesses, by law they are not required to wear special identification equipment. Therefore, some, but not all service

animals wear special collars and harnesses. Also, some, but not all, are licensed or certified and have identification papers. For more information about service animals in places of business, see <http://www.usdoj.gov/crt/ada/animal.htm>.

Categories of Assistance (Service) Animals

Guide Animals

Guide dog use began in Germany in the 1920's for veterans of World War I who lost their sight. In 1929, The Seeing Eye (founded in Morristown, NJ - www.seeingeye.org) became the first group in the United States to breed, raise, and train guide dogs. Although the formal training of guide dogs dates back 75 years, training only became more widespread in the last 30 years and there are many groups raising and training these dogs.

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

The most common breeds used as guide dogs are German Shepherds, Labrador Retrievers, and Golden Retrievers. These guide dogs often wear a harness with a stiff, short, U-shaped handle that keeps the dog and the human companion in very close contact with each other.

The Guide Horse Foundation (www.guidehorse.org) began in 1999 with the goal of training miniature horses as guide horses for the visually impaired. These miniature horses provide an alternative mobility function for blind people and so far perform well at keeping their people safe.

Hearing Animals

Roy Kabat, a movie animal trainer, founded Dogs for the Deaf (www.dogsforthe deaf.org) in 1977 to train dogs to assist hearing-impaired people. These first hearing dogs were trained with input from an audiologist and the American Humane Association.

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. A hearing dog may wear

an orange collar and leash or a vest. A variety of breeds are used as hearing dogs, since intelligence and trainability are more important than strength and size.

Service Animals

Canine Companions for Independence (CCI; www.cci.org) 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. Most service dogs are generally Labrador Retrievers and Golden Retrievers.

Monkeys, typically capuchins, also serve quadriplegic humans. Monkey helpers perform simple tasks, such as getting something to eat or drink, retrieving dropped or out of reach items, assisting with audio cassettes, video cassettes, CDs, and books, and operating lights. Dr. M.J. Williard, a behavioral psychologist, and Judi Zazula, an occupational therapist, trained the first monkey helper in 1979 (see *Helping Hands*; www.helpinghandsmonkeys.org).

Seizure Alert Animals

Some animals can be trained to recognize specific changes preceding an epileptic seizure in people. These animals, usually dogs, can provide a signal that acts as a useful warning to their human companion. Dogs may alert people by whining, licking the owner, and alerting others to their special companion's impending seizure. This alerting behavior allows the owner to get to a safe place or in a safe position before the onset of the seizure.

Social/Therapy Animals

Social/therapy animals provide emotional support in places such as elder care facilities and hospitals. These animals do not have the same legal status as assistance/service animals and are not mentioned in the ADA. Many visiting therapy dogs help physically stimulate people in nursing homes or assisted living facilities by playing ball, being brushed or pet, and going for walks. Although many therapy animals are dogs, any type of animal that is good natured can be used to provide these services. Some animals, including horses, help in reaching people that were once thought unreachable.

[<http://www.nal.usda.gov/awic/companimals/assist.htm>]

There are various registration and certification organizations for service animals.

(1) Service Animal Registry of America (SARA - <http://affluent.net/sara>). The mission of SARA is: “To promote the use of service animals by the disabled; to increase public awareness of the disabled rights concerning service animals; to encourage and support positive federal, state and local legislation involving service animals; to serve as advocates against restrictive legislation for service animals, service animals in training, service animal trainers, and mandatory certification of service animals; to maintain a national database of service animals, service animal trainees, and therapy animals in use in the USA.”

(2) Canine Companions for Independence (www.cci.org).

(3) Support Dogs, Inc. (www.supportdogs.org).

(4) Seeing Eye/ Guide dogs for the Blind (www.guidedogs.com.au)

(5) Assistance Dogs International, Inc (www.adionline.org).

C. Types of Disabilities Served by Assistance Dogs

The regulations enforcing the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213) (“ADA” herein), in 28 CFR §36.104(1), define “disability” as “. . . a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.” The same regulation defines “physical or mental impairment” as:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The phrase physical or mental impairment includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. . . .”

Service animals can provide valuable assistance to persons in most of the listed categories of disability. For instance, service dogs can assist with:

- 1) retrieving or carrying objects for mobility-impaired persons;
- 2) alerting communication for persons with vocal or hearing impairments;

- 3) guide assistance for blind and visually-impaired persons;
- 4) supporting strength for persons with unsteady balance;
- 5) alert assistance for onset of attacks for persons with diabetes or seizure disorders;
- 6) locomotion (pulling) for wheelchair users and persons with limited strength;
- 7) motivation and “help” alert assistance for persons with cardiovascular weakness;
- 8) companionship, responsibility and focus for persons with mental illness, autism disorders or emotional illnesses; and
- 9) social interaction for persons with isolating illnesses or conditions.

Benefits of Service Animals for Children with Disabilities

“This study examined whether disabled children in wheelchairs with service dogs receive more frequent social acknowledgment than when no dog is present. Behaviors of passersby in response to children in wheelchairs were recorded in shopping malls and on school playgrounds. In both settings, social acknowledgments (e.g., friendly glances, smiles, and conversations) were substantially more frequent when a service dog was present. Service dogs may assist in normalizing the social interactions for children with disabilities producing social isolation.”

Mader, B., L.A. Hart, and B. Bergin (1989). Social acknowledgments for children with disabilities: effects of service dogs. *Child Development* 60(6): 1529-1534, ISSN: 0009-3920

Federal law provides that the Department of Veterans’ Affairs may provide service dogs for veterans who have sight, hearing or mobility impairments. 38 USC § 1714 entitled “Fitting and training in use of prosthetic appliances; guide dogs; service dogs” states:

(a) Any veteran who is entitled to a prosthetic appliance shall be furnished such fitting and training, including institutional training, in the use of such appliance as may be necessary, whether in a Department facility or other training institution, or by outpatient treatment, including such service under contract, and including travel and incidental expenses (under the terms and conditions set forth in section 111 of this title) to and from such veteran's home to such hospital or training institution.

(b) The Secretary may provide guide dogs trained for the aid of the blind to veterans who are enrolled under section 1705 of this title. The Secretary may also provide such veterans with mechanical or electronic equipment for aiding them in overcoming the disability of blindness.

(c) The Secretary may, in accordance with the priority specified in section 1705 of this title, provide -

(1) service dogs trained for the aid of the hearing impaired to veterans who are hearing impaired and are enrolled under section 1705 of this title; and

(2) service dogs trained for the aid of persons with spinal cord injury or dysfunction or other chronic impairment that substantially limits mobility to veterans with such injury, dysfunction, or impairment who are enrolled under section 1705 of this title.

(d) In the case of a veteran provided a dog under subsection (b) or (c), the Secretary may pay travel and incidental expenses for that veteran under the terms and conditions set forth in section 111 of this title to and from the veteran's home for expenses incurred in becoming adjusted to the dog.

Appendix A at the end of this paper lists numerous resources and organizations that provide assistance animals for persons with disabilities.

D. Advocacy and Assistance Animals

The Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213) prohibits discrimination against a person with a disability who uses a “service animal.”

42 USC § 12182 entitled “Prohibition of discrimination by public accommodations” states:

(a) General rule

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 person who owns, leases (or leases to), or operates a place of public accommodation.

The regulations enforcing the ADA, at 28 CFR 36.201, states:

“(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.”

40 USC § 3103 entitled “Admission of guide dogs or other service animals accompanying individuals with disabilities” states (with regard to access to **public** buildings):

(a) In General. - Guide dogs or other service animals accompanying individuals with disabilities and especially trained and educated for that purpose shall be admitted to any

building or other property owned or controlled by the Federal Government on the same terms and conditions, and subject to the same regulations, as generally govern the admission of the public to the property. The animals are not permitted to run free or roam in a building or on the property and must be in guiding harness or on leash and under the control of the individual at all times while in a building or on the property.

(b) Regulations. - The head of each department or other agency of the Government may prescribe regulations the individual considers necessary in the public interest to carry out this section as it applies to any building or other property subject to the individual's jurisdiction.

(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1143.)

The Code of Federal Regulations, at 28 CFR §36.104, lists (among others) the following definitions:

Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories--

(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, lecture hall, or other place of public gathering;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) A terminal, depot, or other station used for specified public transportation;

(8) A museum, library, gallery, or other place of public display or collection;

(9) A park, zoo, amusement park, or other place of recreation;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation. . .

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.”

(28 CFR §36.104)

The U.S. Department of Justice, Civil Rights Division, Disability Rights Section has issued its publications, “Commonly Asked Questions About Service Animals in Places of Business” and “ADA Business Brief: Service Animals.” (See Appendices B and C.) These publications state that enforcement of the ADA as it pertains to service animals will be based on the following standards:

- (1) Registered animals may have public access where pets are not allowed, including restaurants
- (2) Housing may not require pet deposits or charge additional fees because of the service animal
- (3) Housing must allow service animals even when there is a No Pets rule.
- (4) One may be asked what the dog does for the person but not what the person’s disability is
- (5) The owner/handler is NOT required to show proof that the animal is a service animal.
- (6) Notwithstanding the above, the owner/handler is liable for damage/injury caused by the service animal and the owner/handler may be asked to remove a disruptive dog (e.g. dog barking during a movie).
[www.ada.gov/qasrvc.htm]

On May 11, 1995, the Seventh Circuit Court of Appeals became the first federal court to address two things: How it will be determined if a dog really is an assistance dog; and what factors will be considered in deciding whether reasonable accommodation requires admitting a dog. In Bronk v. Ineichen, 54 F.3d 425 (C.A.7, 1995) the court ordered a new trial in the case of two Wisconsin women whose landlord refused to allow them to keep a dog they claimed was a hearing dog. Roommates Alisha Bronk and Monica Jay sued Bernard Ineichen, the landlord under the federal Fair Housing act, the Wisconsin state discrimination law and the city of Madison’s housing discrimination ordinance. The jury decided that the dog, Pierre, was not a hearing dog and refused to award them any relief. Bronk and Jay appealed and the higher court said that it was not wrong for the jury to decide that the evidence proved Pierre was not a hearing dog. But the appeals court said the trial judge had confused federal, state and local law when she instructed the jury on the law. Therefore, the appeals court sent the case back for a new trial.

The court said that if Pierre were a hearing dog, the landlord would be required to admit him. If not, the landlord could exclude him. What evidence did Bronk and Jay have that Pierre was hearing dog? Unfortunately, they did not have much. The dog was trained by Bronk’s brother, "an amateur with no demonstrated experience in training hearing

dogs." Bronk claimed that Pierre was certified but could produce no evidence that he was. A witness who formerly lived with Bronk and Jay testified that she saw no evidence he was trained. The defendant had an expert witness who testified about the level of training given hearing dogs. Bronk and Jay had no comparable witness to testify about Pierre's training and their claims about what Pierre could do were contradictory. This would indicate that professional training and certification are very persuasive evidence that your dog really is an assistance dog.

Secondly, Bronk and Jay admitted that they had lived together before in other apartments without a hearing dog. The court let the jury decide whether or not they had demonstrated that they needed a hearing dog. The court said that one of the factors in deciding whether or not an accommodation is reasonable will be the benefit provided to the disabled individual. A disabled person must show that the accommodation requested will "affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability." The appeals court said, "If Pierre were not necessary as a hearing dog, then his presence in the townhouse was not necessarily a reasonable accommodation." And reasonable accommodation is all that is required under the ADA.

On August 25, 2009, an Associated Press article by Lindsey Tanner entitled "Schools resisting autism service dogs" was published in the author's local newspaper. The following is the text of that article.

CHICAGO — Like seeing-eye dogs for the blind, trained dogs are now being used to help autistic children deal with their disabilities. But some schools want to keep the animals out, and families are fighting back.

Two autistic elementary school students recently won court orders in Illinois allowing their dogs to accompany them to school. Their lawsuits follow others in California and Pennsylvania over schools' refusal to allow dogs that parents say calm their children, ease transitions and even keep the kids from running into traffic.

At issue is whether the dogs are true "service dogs" - essential to managing a disability - or simply companions that provide comfort.

School districts say they are not discriminating, just drawing the line to protect the safety and health of other students who may be allergic or scared of dogs.

"The school district has 650 students, not just one. So we have to balance," said Brandon Wright, attorney for the Villa Grove district in central Illinois, which objected to 6-year-old Kaleb Drew's plan to bring his yellow Labrador retriever, Chewey, to school.

Kaleb's family won a judge's order in July allowing the dog to come to class until a trial, set to start Nov. 10. That means when Kaleb starts his first full day of first grade, Chewey will be by his side.

Service dogs have long been used by the blind, but training them to help those with autism is relatively new. While there's little research on how these animals affect autistic children, families like Kaleb's say they have seen marked improvement. And the support group Autism Speaks includes a list of dog-training groups among resources on its Web site.

Autism is a developmental disorder that involves behaviors such as poor eye contact, trouble communicating and repetitive movements such as rocking or hand-flapping. Those with the disorder are prone to outbursts and may have trouble with changes in their environment.

The dogs are trained to be a calming influence, providing a constant between home, school and other new places.

Sometimes, as in Kaleb's case, the dogs are tethered to children to prevent them from running off in dangerous situations.

"It's done so much more than we thought it could," said Kaleb's mother, Nichelle Drew. "We want Kaleb to be able to experience more of life," and the dog has helped him do that, she said.

Under the federal Americans with Disabilities Act, "a person with autism would be considered a person with a disability in nearly all cases, and a service animal is any guide dog, signal dog or other animal individually trained to provide assistance to someone with a disability," said Alejandro Miyar, a spokesman for the Department of Justice.

Miyar declined comment on specific cases but said schools are required to make accommodations for disabled students to use a service animal. Illinois is among several states with similar laws.

Schools, though, can argue that the animals do not provide a functional service. Wright said Kaleb's school already provides him with adequate special services. Officials believe Chewey is more of a companion, not a true service dog.

(<http://www.clarionledger.com/apps/pbcs.dll/article?AID=2009908250336>)

The law and regulations, and the possibility of discrimination against a disabled trust beneficiary based on the use of a service animal, open an area where the trustee may find it useful to use trust funds to employ legal help in reviewing a trust beneficiary's lease or housing contract, negotiating the terms of such a contract, and advocating for the beneficiary's right to have a service animal in public accommodations such as housing and public transportation, or in a public school or facility. Appendix D lists a number of advocacy resources the deal with assistance animal rights and issues.

E. Trust Drafting and Assistance Animals

Special needs trusts often contain provisions describing or listing illustrative "special needs" for which disbursements may be made. Trust clauses that give the trustee maximum discretion to pay for any types of disbursements that may benefit the beneficiary

would likely be sufficient to include any expenses associated with obtaining and maintaining a service animal. However, a more specific clause such as the one below may be more helpful in justifying such payments by the trustee:

“The term “special needs” as used in this trust may include, by way of illustration and not by way of exclusion, payments to any person or organization for the purchase, training, housing or maintenance of a service animal or companion animal for the beneficiary; payments for attendants to assist Beneficiary for travel and training with a service animal; and payments for food, veterinary bills, service animal equipment, medical supplies and other goods or services required for the use, health and maintenance of a service animal for beneficiary.

Payment of boarding, grooming and veterinary expenses for the maintenance of a service dog may have to be borne by the trust due to financial inability of the beneficiary to funds such needs. In an August 21, 2009 New York Times article entitled “An Aide for the Disabled, a Companion, and Nice and Furry,” Walecia Konrad wrote:

. . . There are dozens of established nonprofit organizations, including Canine Companions for Independence and the Guide Dog Foundation for the Blind, that provide service dogs free of charge to those who need them. But the wait can be long.

Plenty of other programs, especially those specializing in the newer uses of assistance dogs, will charge you part or all the cost of raising and training the dog — which can range from \$15,000 to \$50,000.

And whether the dog is donated or purchased, once the animal is home, it becomes the owner’s responsibility to feed and groom it and keep it healthy. Food and routine veterinarian bills on average add up to about \$1,500 a year, said Jeanine Konopelski, director of marketing for Canine Companions for Independence. And “if a dog becomes ill or is hurt, vet bills can go much, much higher,” she said.

Ed Eames, president of the International Association of Assistance Dog Partners, a nonprofit advocacy organization, said, “We hate to see people missing out on this incredible aide because they can’t afford to take care of an assistance dog.” Mr. Eames and his wife, Toni, are both blind and both use guide dogs.

“And remember,” Mr. Eames said. “This is not a wealthy group. Seventy percent of disabled people are unemployed.”

(http://www.nytimes.com/2009/08/22/health/22patient.html?_r=1&scp=1&sq=%22assistance%20dogs%22&st=cse)

F. Tax Treatment of Expenses for Service Animals

The Code of Federal Regulations pertaining to income taxation for individuals contains the following:

26 CFR § 1.213-1 Medical, dental, etc., expenses.

(e) Definitions -- (1) General. (i) The term "medical care" includes the diagnosis, cure, mitigation, treatment, or prevention of disease. Expenses paid for "medical care" shall include those paid for the purpose of affecting any structure or function of the body or for transportation primarily for and essential to medical care. See subparagraph (4) of this paragraph for provisions relating to medical insurance.

(ii) Amounts paid for operations or treatments affecting any portion of the body, including obstetrical expenses and expenses of therapy or X-ray treatments, are deemed to be for the purpose of affecting any structure or function of the body and are therefore paid for medical care. Amounts expended for illegal operations or treatments are not deductible. ***Deductions for expenditures for medical care allowable under section 213 [26 USCS § 213] will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness.*** Thus, payments for the following are payments for medical care: hospital services, nursing services (including nurses' board where paid by the taxpayer), medical, laboratory, surgical, dental and other diagnostic and healing services, X-rays, medicine and drugs (as defined in subparagraph (2) of this paragraph, subject to the 1-percent limitation in paragraph (b) of this section), artificial teeth or limbs, and ambulance hire. However, an expenditure which is merely beneficial to the general health of an individual, such as an expenditure for a vacation, is not an expenditure for medical care.

(iii) Capital expenditures are generally not deductible for Federal income tax purposes. See section 263 [26 USCS § 263] and the regulations thereunder. However, an expenditure which otherwise qualifies as a medical expense under section 213 [26 USCS § 213] shall not be disqualified merely because it is a capital expenditure. For purposes of section 213 [26 USCS § 213] and this paragraph, a capital expenditure made by the taxpayer may qualify as a medical expense, if it has as its primary purpose the medical care (as defined in subdivisions (i) and (ii) of this subparagraph) of the taxpayer, his spouse, or his dependent. ***Thus, a capital expenditure which is related only to the sick person and is not related to permanent improvement or betterment of property, if it otherwise qualifies as an expenditure for medical care, shall be deductible; for example, an expenditure for eye glasses, a seeing eye dog, artificial teeth and limbs, a wheel chair, crutches, an inclinor or an air conditioner which is detachable from the property and purchased only for the use of a sick person, etc.*** Moreover, a capital expenditure for permanent improvement or betterment of property which would not ordinarily be for the purpose of medical care (within the meaning of this paragraph) may, nevertheless, qualify as a medical expense to the extent that the expenditure exceeds the increase in the value of the related property, if the particular expenditure is related directly to medical care. Such a situation could arise, for example, where a taxpayer is advised by a physician to install an elevator in his residence so that the taxpayer's wife who is afflicted with heart disease will not be required to climb stairs. If the cost of installing the elevator is \$ 1,000 and the increase in the value of the residence is determined to be only \$700, the difference of \$ 300, which is the amount in excess of the value enhancement, is deductible as a medical expense. If, however, by reason of this expenditure, it is determined that the value of the residence has not been increased, the entire cost of installing the elevator would qualify as a medical expense. Expenditures made for the operation or maintenance of a capital asset are likewise deductible medical expenses if they have as their primary purpose the medical care (as

defined in subdivisions (i) and (ii) of this subparagraph) of the taxpayer, his spouse, or his dependent. ***Normally, if a capital expenditure qualifies as a medical expense, expenditures for the operation or maintenance of the capital asset would also qualify provided that the medical reason for the capital expenditure still exists. The entire amount of such operation and maintenance expenditures qualifies, even if none or only a portion of the original cost of the capital asset itself qualified.***

(iv) Expenses paid for transportation primarily for and essential to the rendition of the medical care are expenses paid for medical care. However, an amount allowable as a deduction for "transportation primarily for and essential to medical care" shall not include the cost of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a taxpayer go to a warm climate in order to alleviate a specific chronic ailment, the cost of meals and lodging while there would not be deductible. On the other hand, if the travel is undertaken merely for the general improvement of a taxpayer's health, neither the cost of transportation nor the cost of meals and lodging would be deductible. If a doctor prescribes an operation or other medical care, and the taxpayer chooses for purely personal considerations to travel to another locality (such as a resort area) for the operation or the other medical care, neither the cost of transportation nor the cost of meals and lodging (except where paid as part of a hospital bill) is deductible.
[emphasis added]

Therefore, if the effect of a service animal is "mitigation" or "treatment" of a physical or mental illness or condition, such may be considered "medical care" under subparagraph (i) above. A "capital expenditure" for a service animal that qualifies as medical care is deductible, as are "expenditures for the operation or maintenance of the capital asset," pursuant to subparagraph (iii).