

## Emotional Support Animals

### Background

Animals have long been used to provide companionship and aide to those who need it most. Throughout the past decade, this practice has expanded through various programs and, simultaneously, protections have been more clearly defined through legislation. However, not all animals are treated the same under the law. While service animals are protected under the Americans with Disabilities Act (ADA), emotional support animals are not always protected. Therefore, schools should be prepared to handle these unique exposures in order to limit potential liability.

### Scenario

On March 8th, a student arrived at school with his emotional support animal: a medium-sized male Dalmatian K9. The student entered the school and began his educational day. At approximately 9:30 am, the student was walking in the hallway and encountered another student in the hallway and they began to talk. At this time, the emotional support dog started to growl and bear its teeth at the other student. The other student asked several times if the dog was going to bite him and he assured that the dog would not bite. After several minutes, the dog lunged forward and bit the other student on the hand, causing lacerations and puncture injuries and a dislocated thumb.

### Investigation and Damages

Investigation determined that, in the student's first period, the emotional support dog was becoming agitated and barking in the classroom. The teacher asked the student to take the dog out into the hallway and try to calm the dog down. It was discovered that this was not the first time that the dog has created a disruption in class, and the technique of bringing the dog in the hallway tended to be successful in the past.

While in the hallway, the handler and dog encountered another student and the two students began speaking. At this time, the dog began to growl and bear its teeth to the other student. The handler communicated to the student that the dog would "calm down" if the student put his hand out in front of the dog's nose, which would allow the dog to sniff the student and indicate that he is not a threat. When the student did this, the dog lunged forward and bit the other student on the hand, causing significant injuries. The injuries sustained by the student resulted in medical expenses, lost days from school while recovering, missed time from his part time job, lost sports scholarship money as a result of missing high school basketball games, a development of anxieties, and a fear of dogs. The student's family retained legal counsel and ultimately filed a Notice of Intent to File Lawsuit.

At this time, the district defended their actions by stating that their Emotional Support Animals Standard Operating Procedures (SOP) indicated that the school required 24 hour advance notification before an animal will be brought into school; in this case, the handler's parents followed these procedures. However, there were no requirements for ensuring that emotional support animals have been socialized, trained, or properly vaccinated. Also, in this case, it was determined that the school principal had received several previous complaints from teachers, other parents, and students regarding this particular animal related to exposure to animal waste, aggressiveness, and disruptive behavior.

The claim was ultimately settled out of court for \$168,828; which included medical expenses, lost wages, estimated lost scholarship awards, and non-economic factors.

### Lessons Learned

- Consider reviewing and updating of Emotional Support Animal SOP to require that the animal owner provides the school district with adequate documentation including:
  - Training records
  - Copy of adequate insurance limits
  - Verification of veterinary vaccinations
  - Certificate of insurance from the animal's owner
- Consider working with the district's legal counsel and Title I and Title II coordinators to further amend the Emotional Support Animal SOP to clearly define what is to be considered an Emotional Support Animal.
- Consider requiring animal owners to sign a Hold Harmless Indemnification Agreement to protect the school district.
- Consider implementing a review process regarding received complaints about a specific animal.

For more information on this topic, please contact your CIRMA Risk Management Consultant. Visit [CIRMA.org](http://CIRMA.org) for a list of current training programs and e-Learning Center courses.