

Americans with Disabilities Act & Pit Bull-Type Dogs

Denver, Colorado, prohibits any pit bull-type dog from residing with their family in the city.¹ The City even considers disabled residents who have pit bull-type dogs as service animals to be in violation of the ordinance, which has both civil and criminal penalties.

However, in July, 2010, The Department of Justice (DOJ) released its “final rule in order to adopt enforceable accessibility standards” in accordance with Title II of the Americans with Disabilities Act (ADA).² Contained within the exhaustive document is the DOJ’s explicit rejection of the idea that service dogs can be restricted by state and local governments based on breed:

“The Department does not believe that it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs based on local concerns that these breeds may have a history of unprovoked aggression or attacks.”

The DOJ goes on to detail the prohibitive difficulty of deferring to local breed restrictions when considering the rights of the disabled to have, and benefit from, their service dogs. With such a wide variety of dog restrictions from community to community, some based on breed, and some based on size, people with disabilities are unduly restricted regarding living and travel.

In a mere two paragraphs the DOJ dismantles the idea that public safety is best served by judging a group of dogs by the way they look. They also address the idea that a service dog that is safe and acceptable in one community is somehow inherently dangerous in another just because the geographic location has changed.

While cities enact breed discriminatory ordinances under the misconception that it makes residents safer, the DOJ offers a more logical solution to those concerned with dangerous dogs.

“State and local government entities have the ability to determine . . .whether a particular service animal can be excluded based on that particular animal’s actual behavior or history, not based on fears or generalizations about how an animal or breed might behave.”

There is a staggering amount of rational thinking reasoned out in the two paragraph section. Judging dogs on a case by case basis and not on “fears or generalizations.”

¹ Denver Colo., Rev. Mun. Code § 8-55.

² http://www.ada.gov/regs2010/titleII_2010/reg2_2010.html.

Full Text from Final Rule:

“Breed Limitations. A few commenters suggested that certain breeds of dogs should not be allowed to be used as service animals. Some suggested that the Department should defer to local laws restricting the breeds of dogs that individuals who reside in a community may own. Other commenters opposed breed restrictions, stating that the breed of a dog does not determine its propensity for aggression and that aggressive and non-aggressive dogs exist in all breeds.

The Department does not believe that it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs based on local concerns that these breeds may have a history of unprovoked aggression or attacks. Such deference would have the effect of limiting the rights of persons with disabilities under the ADA who use certain service animals based on where they live rather than on whether the use of a particular animal poses a direct threat to the health and safety of others. Breed restrictions differ significantly from jurisdiction to jurisdiction. Some jurisdictions have no breed restrictions. Others have restrictions that, while well-meaning, have the unintended effect of screening out the very breeds of dogs that have successfully served as service animals for decades without a history of the type of unprovoked aggression or attacks that would pose a direct threat, e.g., German Shepherds. Other jurisdictions prohibit animals over a certain weight, thereby restricting breeds without invoking an express breed ban. In addition, deference to breed restrictions contained in local laws would have the unacceptable consequence of restricting travel by an individual with a disability who uses a breed that is acceptable and poses no safety hazards in the individual’s home jurisdiction but is nonetheless banned by other jurisdictions. State and local government entities have the ability to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal’s actual behavior or history--not based on fears or generalizations about how an animal or breed might behave. This ability to exclude an animal whose behavior or history evidences a direct threat is sufficient to protect health and safety.”