



School Board Briefing/Proposed Action Report

Informational (no action required by Board) **Action Report** (Board will be required to take action)

DATE: October 25, 2016
FROM: Dr. Larry Nyland, Superintendent
LEAD STAFF: Kelli Schmidt, Student Civil Rights Compliance Officer,
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I. TITLE

Amending School Board Policy No. 2030,
Service Animals in Schools

For Introduction: November 2, 2016
For Action: November 16, 2016

II. WHY BOARD ACTION IS NECESSARY

The current version of Board Policy No. 2030 is based on a Washington State School Directors' Association (WSSDA) model policy. This Board action would ensure that Board Policy No. 2030 and Superintendent Procedure 2030SP are consistent with the current Title II of the Americans with Disabilities Act (ADA) regulation, Department of Justice (DOJ) Guidance, and U.S. Department of Education's Office for Civil Rights (OCR) guidance and required changes to the WSSDA model policy.

III. FISCAL IMPACT/REVENUE SOURCE

Fiscal impact to this action will be negligible. The only potential impact is changing the policy and copies in the Board records and on the District's website, and announcing the policy and related procedure change to District administrators and staff via email.

The revenue source for this motion is N/A.

Expenditure: One-time Annual Other Source

IV. POLICY IMPLICATION

The change to Policy No. 2030, Service Animals in Schools, would bring it into compliance with the regulation under Title II of the Americans with Disabilities Act, 28 CFR §35.136 and address concerns that the current policy does not conform to DOJ and OCR guidance. The practical implication is that the change would omit two sentences that state that a student or employee must submit a written request to the building principal and that the principal, in consultation with the Section 504 coordinator, shall make a written determination whether or not to permit the service animal in schools. Those sentences would be replaced with one that states, "Generally, the district will modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability."

V. RECOMMENDED MOTION

I move that the School Board amend Board Policy No. 2030, Service Animals in Schools, as attached to the Board Action Report.

VI. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Curriculum & Instruction Policy Committee meeting on October 10, 2016. The Committee reviewed the motion and moved the item forward for consideration by the full Board.

VII. BACKGROUND INFORMATION

On August 28, 2015, in OCR Resolution Letter for Ref. No. 10151156, OCR stated that it had concerns about another district's use of the same WSSDA model policy and the related model procedure. That district entered into a voluntary resolution agreement with OCR to ensure that the policy and procedure are revised to be consistent with the current Title II regulation at 28 CFR §§35.104 and 35.136 and recent guidance from the Department of Justice on Service Animals. Based on technical assistance and feedback from OCR, that district revised its policy and procedures and OCR subsequently approved them. This policy is revised consistent with the OCR approved policy.

VIII. STATEMENT OF ISSUE

Whether to approve the revised Policy No. 2030 or not.

IX. ALTERNATIVES

1. Keeping the existing policy. This is not recommended as OCR is on record as having stated that there are concerns that it does not comply with Title II of the ADA, 28 CFR §§35.104 and 35.136.
2. Continue to review and further revise the policy. This is not recommended because having a policy and procedure that does not comply with federal law provides guidance to staff and the public that may result in unlawful actions and exposes the District to risk and liability.

X. RESEARCH AND DATA SOURCES / BENCHMARKS

- Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA) as amended, 42 U.S.C. §§ 12131-12134; Title II of the Americans with Disabilities Act and its implementing regulations at 28 CFR part, and in particular, 28 CFR §§35.104 and 35.136.
- DOJ response to comments made during the regulation rule-making process for the ADA Amendments Act, which are found in the Appendix of the Title II regulations.
- Gates-Chili Cent. Sch. Dist., U.S. Dist. Ct., W. Dist. of NY, Civil Action No. 15 CV 6583 CJS (DOJ 2015).
- WSSDA Model Policy 2030 and Model Procedure 2030P.
- OCR Ref. No. 101511566, which concerns another district's use of the WSSDA model policy. Reviewed relevant OCR documents, including initial letter of concern, OCR feedback on the policy and procedure, and OCR's approval of a revised policy and superintendent procedure. The revisions to this policy are based on those.

The district also engaged internal and external stakeholders by sharing the proposed revisions as follows:

1. The proposed policy and procedure were shared with Principals via on the Principal Communicator on July 28, 2016, and feedback was requested by August 8, 2016.
2. On August 8, 2016, they were shared with the Section 504 Coordinator, the Special Education Director, the Chief of Student Supports, Chief of Schools, the Assistant Superintendent of Human Resources, the Assistant Superintendent for Operations, the Deputy Superintendent, and Manager of Safety and Emergency Management with a request for feedback by August 22, 2016.
3. It was also shared with the Superintendent's Leadership Team via email on August 18, 2016, with a request for feedback by August 29, 2016.
4. On September 7, 2016, it was shared with the public via an announcement on the District's main webpage, which explained that the School Board and Superintendent and are considering revisions to the current versions of School Board Policy No. 2030 and Superintendent Procedure 2030SP, which relate to service animals in schools. The posting invited individuals to submit questions, concerns, or feedback to the Office of Student Civil Rights (OSCR) by September 27, 2016. A link was provided to the OSCR website that included contact information and PDF links of the proposed policy and procedures that were marked "Draft."
5. On Friday, October 14, 2016, the Special Education PTSA as well as a dozen other disability and advocacy service organizations were notified via email that the School Board and Superintendent and are considering revisions to the current versions of School Board Policy No. 2030 and Superintendent Procedure 2030SP, which relate to service animals in schools. The email included contact information and accessible PDFs of the proposed policy and procedures that were marked "Draft." The organizations were asked to submit questions, concerns, or feedback to OSCR by October 21, 2016.
6. On Tuesday, October 18, 2016, the information was also shared with SPS' Special Education Advisory and Advocacy Council (SEAAC).

As of Tuesday, October 25, 2016, the District had not received any feedback or any suggestions for changes to the proposed policy and procedure.


XI. TIMELINE FOR IMPLEMENTATION / COMMUNITY ENGAGEMENT

Upon approval of this motion, Policy No. 2030 will be amended, go into immediate effect, and be posted online.

XII. ATTACHMENTS

- Amended Policy No. 2030 (clean - for approval)

- Amended Policy No. 2030 (redlined - for reference)
- Amended Superintendent Procedure 2030SP (clean - for reference)
- Amended Superintendent Procedure 2030SP (redlined - for reference)

	SERVICE ANIMALS IN SCHOOLS	Policy No. 2030 Date TBD Page 1 of 1
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The Seattle School Board acknowledges its responsibility to permit students and/or adults with disabilities to be accompanied by a “service animal” as required by federal laws and Washington State’s law against discrimination. This policy governs the presence of service animals in the schools and on school property, including school buses and at school activities.

A “service animal” means an animal that is trained for the purpose of assisting or accommodating a disabled person’s sensory, mental, psychiatric, intellectual, or physical disability.

Generally, the district will modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Adopted: December 2011

Revised:

Cross Reference: Policy Nos. 2029; 2161; 2162; 3210; 5010

Related Superintendent Procedure: 2030SP

Previous Policies:

Legal References: American Disabilities Act (ADA), Revised Title II Regulations, 28 C.F.R. §35 Service animals; Section 504 of the Rehabilitation Act of 1973; RCW 49.60.040 Definitions; RCW 28A.642 Discrimination Prohibition; WAC 392-145-021(3) General Operating Requirements; WAC 392-172A-01155 (3) Related Services; WAC 392-172A-01035 Child with a Disability or Student eligible for Special Education; WAC 392-190 Equal Educational Opportunity – unlawful discrimination prohibited; WAC 162-26 Public accommodations, disability discrimination
Management Resources:

Superintendent Procedure 2030SP

Service Animals in Schools

Approved by: _____ Date: _____

Dr. Larry Nyland, Superintendent



A. Service Animal Uses:

Service animals are animals that are individually trained to perform tasks for people with disabilities such as guiding people who are blind, alerting people who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure or performing other special tasks. Service animals are working animals, not pets. The work or tasks performed by a service animal must be directly related to the individual's disability.

Generally, the district will modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Use of a service animal by an employee with a disability will be allowed when such use is necessary as a reasonable accommodation to enable the employee to perform the essential functions of their job or to access benefits of employment provided to all employees in the same job classification.

The use of a service animal by an individual with a disability will not be conditioned on the payment of a fee, security deposit or surcharge.

B. Requirements for Service Animal Access:

When it is not readily apparent that an animal brought on to school property or to a school-sponsored event is a service animal, the district may make two inquiries to determine if the animal is a service animal: (1) is the animal required because of a disability? and (2) what work or task has the animal been trained to perform?

Service animals must be under the control of the handler at all times and be harnessed, leashed or tethered, unless to the devices interfere with the service animal's work or the individual's disability prevents him from using these devices. Individuals who cannot use such devices must maintain control of the animal through voice, signal, or other effective controls.

C. Parents or Animal Handlers:

Third party service animal handlers who will be regularly present in school for the purpose of assisting a student with his/her service animal will be subjected to the same requirements and standards of conduct that apply to other school volunteers.

D. Removal or Exclusion of a Service Animal from School or School Property:

The building principal or a district administrator may request an individual with a disability to remove a service animal from school, a school sponsored activity or school property if the animal is out of control and the animal's handler does not take effective action to control the animal or the animal is not housebroken.

The district superintendent may exclude a service animal in rare circumstance if, after making an individualized determination, it is determined that:

1. The presence of the animal poses a direct threat to the health and/or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services; or
2. The presence of the animal would result in a fundamental alteration of any school program.

If the district excludes a service animal, it will provide the individual with a disability the opportunity to participate in the service, program or activity without having the service animal on the premises.

E. Service Animals at School-Sponsored Events:

Individuals with disabilities may be accompanied by their service animal to events or activities open to the public that are held in schools or on school property. The building administrator may revoke or exclude the service animals for the reasons set forth in paragraph "D" above.

F. Responsibility/Liability:

1. Generally, neither the district, nor its employees, are responsible for the cost, care or supervision of the service animal.
2. The owner/handler of the service animal is responsible for any and all damage caused by the service animal at school, on school premises or at school activities.

G. Appeals:

A person whose service animal has been excluded or removed may appeal the decision using the discrimination complaint process found in Superintendent Procedure 3210SP.B or 5010 SP.

H. Resources:

District Contact

Section 504/ADA Grievance Coordinator
Office of Student Civil Rights
Seattle Public Schools
MS 32-149, P.O. Box 34165

Seattle, WA 98124-1166
206-252-0178
accessibility@seattleschools.org

State Contacts

Superintendent of Public Instruction
Equity and Civil Rights Office
P.O. Box 47200
Olympia, WA 98504-7200
360.725.6162

Washington State Human Rights Commission
711 South Capitol Way, Suite 402
P.O. Box 42490
Olympia, WA 98504-2490
360.753.6770

Federal Contact

Office of Civil Rights
U.S. Department of Education
915 Second Avenue, Room 3310
Seattle, WA 98174
206.607.1600