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Barking Up the *Right* Tree: Navigating Accommodation Requests for Animals on College Campuses



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Animalia
Fur and fury at 40,000 feet as more people bring animals on planes

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Airline: 'Emotional support' pig kicked off flight for being disruptive

By Emmauelle Ginsberg, CNN
Updated 12:06 PM ET, Mon December 1, 2014



Passenger Hudson Phipps took a picture after this passenger was asked to leave a US Airways flight with her "Emotional" pig.

More from CNN

- The rise of South Korea's 'over' culture
- Party in the Library unveils 2014 Halloween


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'Emotional support peacock' barred from United Airlines plane




Woman Claims Ferret as Service Animal, Delays United Flight



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Today's Agenda

- Review UP 704
- Relevant Federal Laws
 - "Service Animal" vs. "Assistance Animal"
- Hypos
- Questions



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UP 704: Animals on Campus

Service Animal/Service Animal in Training



Domestic Animals



Laboratory Animals Used for Teaching and Research



Emotional Support Animals




Feral or Wild Animals



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UP 704: Animals on Campus

- UP 704 applies to all animals on campus
- Basic Requirements for all animals:
 - Control
 - Vaccination
- University reserves the right to remove any animal that is:
 - Is a direct threat to health and safety of any member of the campus community or to any other animal;
 - Disruptive; or
 - Not housebroken



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Federal Disability Laws


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Americans with Disabilities Act (1990)



- No qualified individual with a disability shall be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by a public entity.
- University must provide a reasonable accommodation to a person with a disability unless providing the request would impose an undue burden or fundamentally alter an education program.





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Service Animals


- “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 mental disability.”
- The work or tasks performed by a service animal must be directly related to the individual’s disability.
- Other species of animals (e.g. wild or domestic, trained or untrained) are NOT service animals.






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Service Animals in Training


- N.C.G.S. 168-4.2
- A Service Animal in Training is an animal training to become a Service Animal
- The animal must be accompanied by the person who is training the Service Animal and the animal must be wearing a collar, leash, harness or cape that identifies the animal as a Service Animal in Training



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- N.C.G.S. 168-4.2:
- An animal in training to become a service animal may be taken into any of the places listed in G.S. 168-3 for the purpose of training when the animal is accompanied by a person who is training the service animal and the animal wears a collar and leash, harness, or cape that identifies the animal as a service animal in training.
- The trainer is liable for any damage caused by the animal.




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Service Animals (cont'd)

University officials may only ask the following two questions as it relates to the presence of a service animal on campus:

1. Is the service animal required because of a disability?
2. What work or task(s) has the service animal been trained to perform?



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Hypo #1

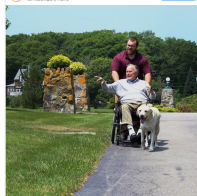
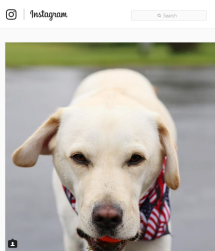
George is a junior at UNC-Charlotte and very active in intramural soccer. During the spring semester, George experienced a seizure in his chemistry lecture and was admitted into the hospital for treatment. Over the summer George was diagnosed with a seizure disorder by his primary care doctor.




Hypo #1


For the Fall semester, George decided to bring a service animal named Pete to campus. Pete has been trained to calm humans experiencing panic attacks but George believes Pete can also be trained to detect seizures too. George wants to bring Pete to campus as a Service Animal in Training until October, when the next training class begins. George also requests that Pete be present on the sidelines at his intramural soccer games, which begin the second week of September.









Assistance Animals




Assistance Animals



Therapy
Animal




Emotional Support
Animal



Assistance Animals


- The Fair Housing Act (FHA) prohibits discrimination on the basis of disability in housing.
- Under FHA, it is unlawful to “refuse to make a reasonable accommodation in rules or policies, practices, or services” when it would be necessary to afford a person an equal opportunity to “use and enjoy a dwelling.”
- Enforced by the Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD)
- Provide a reasonable accommodation unless doing so would amount to an undue burden for the educational institution.



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Assistance Animals (cont'd)

- 2013 HUD guidance related to "assistance animals" states:
- **"Any** animal that:
 - works, provides assistance, or performs tasks for the benefit of a person with a disability, or
 - provides emotional support that alleviates 1 or more identified symptoms or effects of a person's disability.
- HUD guidance does **not** require that an assistance animal be individually trained or certified.
- **But:** Universities can require that students present medical documentation showing how the assistance animal alleviates a symptom of a person's disability.



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Accommodation Analysis for Assistance Animals

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Accommodation Analysis


HUD guidance requires that institutions of higher education permit students to have assistance animals in their "**dwelling**s" if:

1. The person has a disability;
2. The animal is necessary to afford the person with a disability an equal opportunity to use and enjoy the dwelling; and
3. Identifiable relationship or nexus between the disability and the assistance that the assistance animal provides.

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— *U.S. v. The University of Neb. at Kearney* (2013)

- A UNK student was diagnosed with depression and anxiety. The student's doctor prescribed a service animal that was trained to respond to her anxiety attacks.
- The student signed a lease to live in a University apartment and requested to have her dog live with her in the apartment.
- The University had in place a "no-pets" policy and denied the student's request.
- U.S. DOJ, on behalf of the student, brought a lawsuit against UNK alleging that its failure to provide an accommodation was a violation of the FHA.
- University argued that on-campus housing was not a "dwelling" within the meaning of FHA.
- **Summary judgment (in part) for the plaintiff (student) holding that housing facilities on UNK's campus were "dwellings" within the meaning of FHA.**




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— **Accomodation Analysis (cont'd)**

Exceptions:

- Undue financial or administrative burden
- Accommodation fundamentally alters the essential nature of housing service
- **Direct threat** to the health and safety of others that cannot be reduced or eliminated by another reasonable accommodation
- Substantial physical damage to property
- Animal is **out of control**
- Animal is **too large** in relation to space
- Animal violates another person's right to peace and quiet enjoyment
- Animal is not vaccinated




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Animals

Daniel the emotional support duck takes his first plane ride, soars in popularity


By Amy B. Wang October 20, 2016 [Email the author](#)




Hypo #2

Sophie is a sophomore at UNC-Charlotte. Sophie was recently prescribed an emotional support animal by her doctor to help control certain symptoms of her depression. Sophie sought permission to have a 2 pound guinea pig attend her Math class for emotional support and to allow the guinea pig to live in her residence hall. Sophie's roommate transferred to another school at the end of last semester and Sophie plans to live alone in her residence hall room this semester.



Hypo #2

Sophie has requested an answer to her request in three (3) days. Sophie's mother, who is also an attorney, is cc'd in the email communication to the University.



Hypo #3

Sydney and Sally are sorority sisters at Big U. Sydney is an officer in the sorority and is required to live in the sorority house. Sydney requested that her dog, Peaches, live in the sorority house with her. Peaches is trained to help Sydney manage her panic attacks. Sally complains to Housing and Residence Life that Peaches' presence in the house gives her headaches and causes her respiratory problems.

Big U concluded that because Sally signed her lease first, Sydney must move out of the sorority house with Peaches or stay in the house without her dog. Sydney immediately sues Big U and seeks a preliminary injunction that would prohibit Big U from taking any further action.

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Summary

<p><u>Service Animal or Service Animal in Training</u></p> <ul style="list-style-type: none"> • Dog or miniature horse ONLY • May accompany owner anywhere on campus that is open to the public where the student is allowed to go • University limited in types of questions it may ask student or employee • Owner still subject to UP 704 	<p><u>Emotional Support Animal</u></p> <ul style="list-style-type: none"> • No blanket restriction on any specific type of animal • Animal ONLY permitted in the student's dwelling • University allowed to ask for medical documentation showing a nexus between the disability and emotional assistance provided by the animal • Owner still subject to UP 704
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Questions??



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Mark S. Hines (@markshines) · Oct 10, 2018
 Great. The dog got my flight. Nice to look at the clouds.
 415 Retweets · 146 Likes · 201 Comments
 12/10/18 · 12/10/18 people are talking about this
