

Navigating Accommodation Requests for Emotional Support Animals on College Campuses



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Animalia

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

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

By Emanuella Grinberg, CNN

Updated 11:36 PM ET, Mon December 1, 2014



Passenger Robert Phelps took a picture after this passenger was asked to leave a US Airways flight with her "disruptive" pig.

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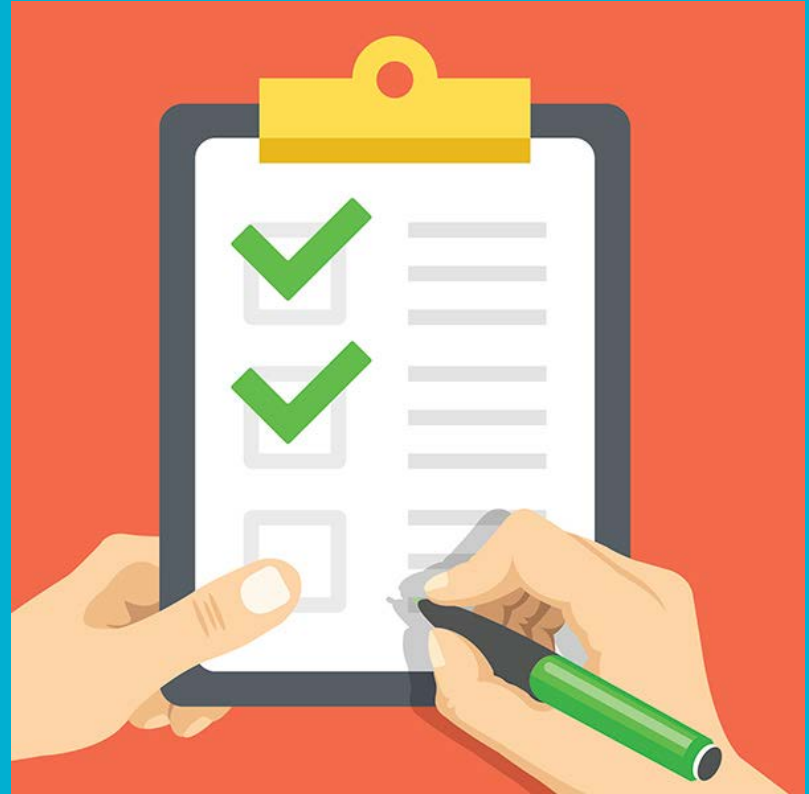
Posted by Paige Cerulli | 12 months

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Today's Agenda

- Review of University Policy 704: Animals on Campus
- Relevant Federal Laws
 - “Service Animal” vs. “Assistance Animal” Distinction
- Factors used to Analyze Assistance Animals
- Hypos
- Questions



Conflicting Definitions

Air Carrier Access Act

Local Ordinance

State Laws ADA UP 704

Section 504 Fair Housing Act

UP 704: Animals on Campus

Service Animal or Service Animal in Training



Domestic Animals



Laboratory Animals Used for Teaching and Research



Emotional Support Animals

Wild Animals



UP 704: Animals on Campus

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



Federal Disability Laws

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.



Section 504

- “No otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance..”
- Almost all colleges and Universities receive federal financial assistance.

Section 504

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 (wild or domestic, trained or untrained) are NOT service animals.
- Comfort, therapy, and emotional support animals are not included in this definition.



Service Animals in Training

- 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 wearing a collar, leash, harness or cape that identifies the animal as a Service Animal in Training



Service Animal Questions

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

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

Service Animals

Air Carrier Access Act (1986)

- Federal law that applies to airlines.
- Under the Air Carrier Access Act, a service animal is defined as: “any animal that is individually trained or able to provide assistance to a person with a disability; or any animal that assists persons with disabilities by providing emotional support.”



Hypo #1

Jean is a junior at UNC-Charlotte and very active in intramural soccer. Last semester, during Jean's chemistry lecture, she experienced a seizure and was admitted into the hospital for treatment. Over the summer Jean was diagnosed with a seizure disorder by her primary care doctor.

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

Hypo #2

Ben is a rising freshman at UNC-Charlotte. Ben is blind and attended a small private high school. In high school Ben had a 1-1 aid who attended all of his classes with him. Ben believes that a dog trained to guide him around campus and to his classes would help him adjust to life at a large University.

On the first day of the fall semester, Ben brings a 30 pound miniature horse named Jake with him to guide him around campus. One of Ben's professors is concerned because Jake damaged the bottom of a chair in his classroom. Other members of the campus community have expressed concern that Ben will not be able to adequately control Jake in common areas on campus.



Assistance Animals

— Assistance Animals



Emotional Support
Animals

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.



Assistance Animals (cont'd)

- 2013 HUD guidance related to “assistance animals”
- “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.



Assistance Animals (cont'd)

HUD guidance requires that institutions of higher education permit students to have assistance animals in their “dwelling” 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.

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

- Plaintiff, 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.
- 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.



U.S. v. Kearney (cont'd)

- UNK argued that it did not violate the FHA because student housing was not a “dwelling” within the meaning of the Fair Housing Act.
- “Dwelling” means “any building, structure, portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”
- Residence has been interpreted to mean “a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit.”



U.S. v. Kearney (cont'd)

- UNK argued that student housing is temporary and that they are more like a “transient” visitor in their on-campus residence
 - Residences can be “temporary or permanent”
 - Precedent: Boarding schools, quarters for migrant farm workers, halfway houses
- HUD Regulation language on “dormitories.”

U.S. v. Kearney (cont'd)

- Summary judgment in favor of the plaintiff (student) holding that housing facilities on UNK's campus were "dwellings" within the meaning of FHA.
- Settlement outside of court



Animalia

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

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



Daniel, an emotional support duck, on board a recent American Airlines flight. (Mark Essig)



Accomodation Analysis for Assistance Animals

Accomodation Analysis

(1) Does the person have a disability?

- Disability: A physical or mental impairment that substantially limits one or more major life activities.
- Examples:
 - Orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, diabetes, drug addiction and alcohol addiction.

Accommodation Analysis (cont'd)

(2) Is there an identifiable relationship or nexus between the disability and the need for the assistance animal?

- Assistance animals are only required as a reasonable accommodation if they are necessary.
- Universities may engage in an information exchange with the student about the nexus between the disability and the assistance animal.
- Establishing a nexus between the disability and the assistance performed by the animal meets the necessity prong of HUD's guidance.

Accommodation Analysis (cont'd)

- Educational institutions must conduct an individualized assessment.
- Assessment must be based on objective evidence about the specific animal, not fear, speculation, or generalized notations of a particular animal based on breed or weight.

Accomodation Analysis (cont'd)

Exceptions: (i.e. accommodation unreasonable)

- Undue financial or administrative burden
- Accomodation 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



Comparison

Service Animal or Service Animal in Training

- Dog or miniature horse ONLY
- May accompany owner anywhere on campus that is open to the public where the student may go
- Owner still subject to UP 704

Emotional Support Animal

- No blanket restriction on any specific type of animal
- ONLY permitted in the student's dwelling
- University allowed to ask for medical documentation showing a nexus between the disability and emotional assistance of the animal
- Owner still subject to UP 704

Hypo #3

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 her 20 pound guinea pig attend her Math class for emotional support and to allow the guinea pig to live with her. Sophie's roommate transferred to another school at the end of last semester and Sophie plans to live alone in her dorm room this semester. Sophie has requested an answer to her request in three (3) days. Sophie's attorney is cc'd in the email communication to the University.

Velzen v. Grand Valley State University, 902 F. Supp.2d 1038 (W.D. Mich. 2012)

University denied student's request

Student filed a lawsuit and sought an injunction against the University

University's motion to dismiss FHA claims DENIED; claims for injunctive relief against University officials and the University as an institution, survived dismissal.

Hypo #4

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 on her own. Sydney immediately sues Big U and seeks a preliminary injunction prohibiting Big U from taking any further action.

Entine v. Lissner, Lexis 190289 (S.D. Ohio, Nov. 17, 2017)

- Court issued a preliminary injunction against the University.
- Student #2 (Sally) claimed to have serious respiratory problems and symptoms that triggered her Crohn's disease.
- Court held that the claim properly alleged that the University did not perform a sufficient individualized assessment to conclude that the dog was a direct threat to the student's health or whether the health/respiratory issues complained of were in fact caused by the presence of the dog or other allergens that the student may have been sensitive to, such as dust or cockroaches.

On-going Concerns

1. Training for Assistance Animals
2. Control of the Animal
3. Changing Public Perception
4. Liability Risks (Dangerous Breeds)

— Questions???





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Daniel, the duck on my flight, likes to look at the clouds.

4:55 PM - Oct 16, 2016

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