

TOPIC:

Update on Accommodating Service and Assistance Animals on Campus: Making Heads or Tails of Federal Disability Laws

INTRODUCTION:

This NACUANOTE updates the April 14, 2011 NACUANOTE on the same topic. In the past year, litigation and government enforcement actions have highlighted the deep uncertainty amongst institutions, students, and government agencies alike regarding the use of animals on campus as an accommodation for students with disabilities – especially psychological or mental disabilities which may not be obvious.

The purpose of this Note is to examine the current state of the law – including the Americans with Disabilities Act and the ADA Amendments Act ("ADAAA"), Section 504 of the Rehabilitation Act, and the Fair Housing Act; to highlight recent litigation by government agencies and individuals; and to suggest best practices for addressing requests for accommodations regarding service and assistance animals on campus.

The law in this area is unsettled – indeed, one disability law expert (and former Deputy Chief of the Department of Justice's Disability Rights Section) has characterized it as "the confusing maze of federal laws that may apply to decisions to allow animals on campus" [\[1\]](#) While this NACUANOTE provides one perspective, readers must reach their own legal conclusions and draft campus policies in light of federal and state law, the factual circumstances at hand, and consultation with counsel.

DISCUSSION:

College and university officials continue to receive requests to bring service animals (a term specifically defined by the Americans with Disabilities Act) and assistance animals (a broader term used by the U.S. Department of Housing and Urban Development to encompass service, therapy, and support animals) on campus as an accommodation. These animals can make institutions more accessible for students with disabilities and enrich educational communities by accommodating a broader range of students. Yet as colleges and universities strive to accommodate their students, they must do so against a confounding backdrop of antidiscrimination laws which impose differing obligations and apply to different situations on campus.

I. What Laws Govern the Use of Service or Assistance Animals on College and University Campuses?

At the federal level, Titles II and III of the Americans with Disabilities Act of 1990 ("ADA"), Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act ("FHA") all prohibit discrimination based on disability, and they all impose various obligations upon colleges and universities to accommodate

service or assistance animals for students. Virtually all higher education institutions are subject to one or more of these laws, as more fully explained below.

A. The Americans with Disabilities Act

The ADA and its amendments in the ADAAA apply to both public and private institutions. Title II of the ADA applies to public colleges and universities, [2] while Title III applies to private entities that are “places of public accommodation,” including private undergraduate or postgraduate schools or other places of education. [3]

The ADA requires that any public entity or place of public accommodation “shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.” [4]

Service Animal Defined: On September 15, 2010, the Department of Justice (“DOJ”) issued Final Rules amending Titles II and III of the ADA to define “service animal” as:

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 other mental disability. [5]

The work or task that the dog performs must be directly related to the individual’s disability, and can include a wide variety of services, such as assisting those with low vision, alerting individuals who are deaf or hard of hearing, pulling a wheelchair, and retrieving items such as medicine or the telephone. [6] Service dogs may also perform tasks such as recognizing and assisting during seizures. For individuals with psychiatric or neurological disabilities, the dog’s tasks could include preventing or interrupting impulsive destructive behavior. [7] For example, for autistic students, service animals can be trained to interrupt inappropriate repetitive behavior with a persistent nudging task. [8]

The DOJ is explicit that the following animals are not considered service animals under the ADA and ADAAA:

- Any animals besides dogs (though there is a special provision permitting miniature horses in some cases); [9]
- Animals that serve solely to provide a crime deterrent effect; and
- Emotional support, comfort, or companionship animals. [10]

With respect to the last bullet point, the DOJ has made a clear distinction between service animals that are trained to respond to an individual’s needs, and untrained “emotional support” animals whose mere presence may positively affect a person’s disability. [11] The former, with their recognition-and-response training, are covered under the ADA, while the latter – therapeutic as they may be to the individual with the disability – are not covered.

Finally, the regulations also provide that a covered entity need not accommodate a service animal if it poses a direct threat to the health or safety of others, [12] the owner cannot effectively control it, or if the animal is not housebroken. [13]

Accordingly, the ADA regulations require that colleges and universities modify their policies to permit individually trained dogs that qualify as service animals on campus.

B. Section 504 of the Rehabilitation Act

Section 504 applies to any institution receiving federal financial assistance, which includes nearly all public and private colleges and universities.

Under Section 504, “[n]o qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.” [14] For example, a college or university “may not impose upon handicapped students other rules, such as the prohibition of . . . dog guides in campus buildings, that have the effect of limiting the participation of the handicapped students in the [institution’s] educational program or activity.” [15]

Service Animal Defined: Section 504 and its implementing regulations do not specifically define “service animal.” However, the Department of Education’s Office for Civil Rights (“OCR”), which enforces Section 504, has previously adopted the DOJ’s ADA regulatory definition. [16] It is unclear whether the Department of Education will continue to adopt the DOJ’s new definition when looking at reasonable accommodations under Section 504.

What is clear, however, is that the U.S. Department of Housing and Urban Development (“HUD”) applies a broader definition of “assistance animal” when enforcing Section 504 for reasonable accommodation purposes in the housing context. HUD’s definition of assistance animal is discussed further below.

C. The Fair Housing Act’s Application to Animals in Campus Housing

As discussed above, virtually all colleges and universities are required to accommodate “service animals” (as defined in the ADA) on campus, whether in public spaces, academic buildings, or in other campus facilities.

By contrast, the Fair Housing Act (“FHA”) requires covered entities to accommodate a much larger universe of “assistance animals,” which includes service animals as well as untrained emotional support or therapy animals (not limited to dogs), in housing covered by the Act. HUD maintains that this is because the FHA applies in the unique context of housing:

There is a valid distinction between the functions animals provide to persons with disabilities in the public arena . . . as compared to how an assistance animal might be used in the home. For example, emotional support animals provide very private functions for persons with mental and emotional disabilities. [17]

Assistance Animals Defined: Under the FHA, a person may keep an assistance animal in his or her dwelling unit as a reasonable accommodation 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 a dwelling; and
- (3) there is an identifiable relationship or nexus between the disability and the assistance the animal provides. [18]

Beyond this three-part test, there are no restrictions on the type of animal that could qualify as an assistance animal under the FHA, so long as the animal’s ameliorative effects are reasonably supported. [19] Indeed, HUD has stated that “species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the FHAct and Section 504.” [20] Courts have likewise held that animals need not be trained, [21] nor do they need to be dogs, [22] to qualify as animals whose presence would constitute a “reasonable accommodation” under the FHA.

Of course, accommodations must be reasonable. HUD does not require housing providers to permit animals that pose a direct threat to the health and safety of others; would cause substantial physical

damage to the property of others; would pose an undue financial and administrative burden; or would fundamentally alter the nature of the provider's operations. [23]

Because the FHA requires accommodation of a much broader group of animals, it is important to consider whether the FHA applies on college and university campuses.

Does the FHA Apply to Student Housing? The FHA requires a covered entity to make "reasonable accommodations" to afford an individual with a disability an "equal opportunity to use and enjoy a dwelling." [24] HUD has extended this obligation to the use and enjoyment of a "dwelling unit, including public and common use areas." [25]

But does student housing qualify as a "dwelling" under the Fair Housing Act? Court rulings have not affirmatively settled the matter, but the DOJ and HUD, who enforce the Fair Housing Act, have become increasingly adamant that it does. As one federal court noted in a 2009 case applying the FHA to a boarding school dormitory:

The FHA defines "dwelling" as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." 42 U.S.C. §3602(b). At first blush, this definition would appear to exclude school dormitories, which ordinarily do not house "families," but the FHA instructs that "family" includes a single individual. 42 U.S.C. §3602(c). Because a boarding school dormitory is occupied as a residence by one or more individuals, then, it fits the statutory definition of dwelling. [26]

Perhaps more importantly, though, recent enforcement actions and lawsuits filed by HUD and the DOJ indicate their clear belief that the FHA extends to college and university housing. In 2009, after a three-year investigation, HUD charged Millikin University in Illinois with violating the Fair Housing Act because of the school's failure to make a reasonable accommodation by granting a student's request to live with her service animal – a dog trained to detect and assist during seizures – in a campus residence hall. [27] The University settled with the government in federal district court in January 2011. [28] In discussing the case on the federal government's Disability Blog, the General Deputy Assistant Secretary of HUD explained:

United States of America v. Millikin University highlights the principle that under the FHAct, university housing must be provided and administered to persons with disabilities in a non-discriminatory manner – in other words, fair housing does not stop where the campus begins. HUD stands ready to enforce the fair housing rights of people with disabilities wherever such violations should occur. [29]

More recently, in November 2011 after a HUD investigation, the DOJ filed a suit in federal court against the University of Nebraska at Kearney, alleging that the University violated the Fair Housing Act by denying a student's request to have her emotional assistance animal live with her in a university apartment. The animal in question is a four pound dog that purportedly helps alleviate the symptoms of the student's anxiety and depression. The complaint emphasizes that "particularly in the context of residential settings . . . there may be a legal obligation to permit the use of animals that do not qualify as service animals under the ADA, but nonetheless provide necessary emotional support to persons with disabilities." [30]

As a practical matter, HUD and the DOJ have made clear they will enforce the FHA with respect to reasonable accommodations in campus housing, and institutions should adopt policies regarding assistance animals with that in mind.

D. State Laws

In addition to federal laws, many states have adopted antidiscrimination statutes that require accommodation of a broad range of service and assistance animals. For example, Maine's definition of "service animal" includes "[a]ny animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician's assistant, nurse practitioner or licensed social worker" [31] Other states expand the definition to include service animals in training. As these laws may be broader than the ADA, college and university officials should consult local laws when drafting campus policies.

II. What About Accommodations and the Interactive Process? The New ADA Regulations Leave Many Open Questions.

The interplay of the ADA, Section 504, and the FHA has created confusion amongst students, administrators, and even agency officials regarding the process for accommodating requests for animals on campus – especially where the student's need for the animal may not be obvious.

A. Accommodations under Section 504

Institutions are familiar with making accommodations for students with disabilities under Section 504. According to the Department of Education's Office for Civil Rights, at the postsecondary level it is the student's responsibility under Section 504 to make his or her disability known and to request academic adjustments. [32] Importantly, OCR also states that:

A student who requests academic adjustments or auxiliary aids because of a handicapping condition may be requested by the institution to provide documentation of the handicap and the need for the services requested. This may be especially important to an institution attempting to understand the nature and extent of a hidden disability. The requested documentation may include the results of medical, psychological, or emotional diagnostic tests, or other professional evaluations to verify the need for academic adjustments or auxiliary aids. [33]

Thus, when a student requests permission to bring a dog into the classroom as an auxiliary aid, the common practice at many institutions, at least where the disability and the function of the dog are not obvious, would be to initiate the typical Section 504 interactive process. This could include asking the student to provide sufficient documentation to allow the school to confirm the handicap, the need for the dog as an accommodation, documentation of the dog's training, and how the school can best accommodate the student and the dog.

B. But What about the ADA?

The recent changes to the ADA Title II and III regulations in the ADAAG may call into question the longstanding practice described above, and hinder an institution's ability to engage in an interactive process with its students. Specifically, the regulations state:

Inquiries. A public entity [or public accommodation under Title III] shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask

[1] if the animal is required because of a disability and

[2] what work or task the animal has been trained to perform.

A public entity shall not require documentation, such as proof that the animal has

been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). [34]

The DOJ reiterated its position in a July 2011 publication on service animals, stating that beyond the two limited inquiries above, “[s]taff cannot ask about the person’s disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.” [35]

The conflict between these new regulations and longstanding college and university accommodation practices is already causing litigation. In one recent case, a student sued Palm Beach State College under the ADA and Section 504, alleging that the college required what the student characterized as “voluminous documentation” describing her need for the dog. [36] In partially granting the student’s motion for preliminary injunction, the court specifically cited the new ADA regulations and their prohibition on requiring documentation, and found that the student had demonstrated a substantial likelihood that she would succeed on the merits of her claim. The case filed by the DOJ against University of Nebraska – Kearney arises under the FHA, but also focuses on the “numerous onerous documentation requirements” that the school allegedly imposed upon the student requesting the dog as an accommodation. [37]

These new ADA regulations create a tension with, and a departure from, the interactive reasonable accommodation process typically required to be undertaken between an institution’s disability office and the student. In light of this tension and recent litigation, institutions may wish to revisit any policies or practices involving inquiries about or documentation of a disability, to ensure they are in compliance with the new regulations. [38]

C. The Fair Housing Act

To further complicate matters, HUD’s FHA regulations – which permit a much broader scope of animals in residential dwellings – permit institutions to verify the existence of the disability and the need for the accommodation by requiring that the student provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability. [39]

D. Title I of the ADA and Employees

If the individual requesting to use a service or assistance animal also works for the university, yet another set of rules may apply. This NACUANOTE focuses primarily on Titles II and III of the ADA, which essentially affect “public” spaces on campus, like academic buildings, quads, theaters and libraries. But it is also important to briefly consider Title I of the ADA, which applies in the employment context. Title I does not define “service animals,” nor does it require institutions to automatically permit a specific type of animal in the workplace. Rather, animals are treated as a “reasonable accommodation.”

This means that institutions must engage in their typical “reasonable accommodation” process, and that the institution, as the employer, has the right to request reasonable documentation that the accommodation is needed. At the same time, because Title I does not define “service animal” like Titles II and III, an animal that falls outside the “service animal” definition (i.e. an emotional support animal, or an animal other than a dog) may be a reasonable accommodation in the employment context.

E. The Result: A Challenging Patchwork

As can be seen, institutions are left with a patchwork of federal laws, regulations, and guidance that can change an institution's obligations significantly depending upon the student's disability, the type of animal, the work or tasks the animal performs, whether the student is employed by the university, where on campus the student wishes to bring the animal, and whether the school is applying the ADA, Section 504, or FHA standards.

Consider just one example:

A student with a disability at a public institution brings a small dog on campus with her to alleviate the symptoms of her disability. If she walks her dog into a classroom, the institution can require that the animal must be individually trained to perform a specific task related to the student's disability, pursuant to the ADA Title II regulations. However, those same regulations would seemingly prevent the institution from inquiring about the nature of the student's disability or requesting supporting documentation that the dog has been trained to perform that task.

If the student wants that same dog to live with her in her residence hall, pursuant to HUD's FHA regulations, the institution may then require documentation of the student's disability and the need for the dog. But unlike in the classroom context, the dog does not need to be trained; it can be a comfort or emotional support animal.

Assuming the dog indeed is an untrained emotional support animal, if the student then wishes to bring the dog to the library, the institution could prohibit that, as that space is governed by Title II of the ADA. Unless of course the student is going to the library for her part-time job at the reference desk, in which case the emotional support animal may qualify as a reasonable accommodation in the employment context under Title I of the ADA.

Until the government clarifies its regulations, disability offices, campus counsel, and other administrators will have to prepare for these situations and address requests for service animals on a case-by-case basis, with an understanding that the relevant federal laws and the extent of permissible inquiries will vary in each situation.

III. Practice Pointers

When navigating the various obligations to accommodate animals imposed by state and federal laws, institutions may wish to consider some of the following practice pointers:

A. Federal Laws Provide a Floor, Not a Ceiling

Even if the ADA does not require the institution to accommodate student requests to bring certain animals (i.e., emotional support animals) onto campus, institutions may wish to consider permitting such animals because of their benefits to students with disabilities. For those students with emotional or psychiatric disabilities, animals can be therapeutic and provide comfort and support quite apart from the legally required framework regarding service animals. [40] Each institution will need to determine whether it wishes to simply meet its legal obligations or consider offering a different standard of access.

B. Consider How to Manage Other Students' Concerns

There may be individuals on campus with legitimate grounds to object to the presence of animals in residence halls, classrooms, and other buildings, based on allergies, phobias or other psychological problems with animals. Balancing the needs of both sets of students can present an even greater level of complexity, but the Department of Justice has been clear in its guidance that institutions must do exactly that:

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom . . . they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility. [41]

At the same time, you cannot strike this balance by segregating a student with a service dog:

People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. [42]

The scenarios here are nuanced, and will require case-by-case attention.

C. Consider How, or Whether, to Distinguish between the Treatment of Trained “Service Animals” and Potentially Untrained “Assistance Animals” on Campus

As noted above, “service animals” must be accommodated nearly everywhere on campus, while “assistance animals” such as emotional support and therapy dogs may need to be accommodated only in dwelling units or in the employment context. Thus, an institution must consider how, or whether, it wishes to distinguish between these two groups of animals. Will the university permit a deaf student to bring a trained “hearing dog” to class, but tell a student with an anxiety disorder that her untrained emotional support dog, who alleviates her panic attacks, must remain in the dorm while she attends class? Will this decision be made on a case-by-case basis, or will it be stated as a general policy? Or, will the institution decide as a general policy matter to accommodate untrained assistance animals in the same general manner as trained service dogs?

D. Remember While Inquiries May Be Limited, Accommodations are Not Limitless

Some have worried that students could take advantage of more permissive regulations about service animals, but remember that the law still requires that accommodation requests must be adequately supported, and reasonable.

The new ADA regulations limiting inquiries and prohibiting documentation requests create a tension with the typical Section 504 interactive process and with other federal regulations (ADA Title I, FHA), which permit documentation requests. That said, the DOJ’s “Guidance and Analysis” section in the new regulations states that inquiries are limited to eliciting the information necessary to make a decision without requiring disclosure of confidential disability-related information that a state or local government entity does not need. [43] If a student’s answers to the two inquiries permitted by the ADA do not provide the information necessary for the institution to make a decision that the animal is a service animal, there is at least an argument that the institution may require additional information – though this argument has not yet been tested.

The important point is that the person asking these questions should be an institutional official well versed in the applicable laws, and should not ask for any overly burdensome, confidential or unnecessary information.

E. Train Disability Services and Residence Hall Staff

The law surrounding accommodation of animals is complex. In addition, there is sometimes a stigma or skepticism associated with assistance animals, especially those that do not fit the mold of the traditional seeing-eye dog. Colleges and universities would be well served to educate faculty and staff about the benefits of service and assistance animals and the institution's legal obligations and policies regarding these animals.

F. Direct Inquiries to the Professionals

Because so much uncertainty exists with respect to this area of law, institutions may wish to direct all staff, student, and faculty questions about animals on campus to a single person or team of people within the disability services office (or other similar office on campus). These officials will be familiar with the law, the nuances of when and where certain animals must be allowed on campus as an accommodation, and what process the institution should undertake to make such accommodations.

CONCLUSION:

The former DOJ official cited at the start of this Note was not exaggerating when she characterized the current state of the law regarding service and assistance animals as a "confusing maze." But by engaging in a thoughtful review of the applicable laws, campus counsel and disability services administrators can do their best to address requests for animals on a case-by-case basis. The key will be accommodating the needs of students with disabilities, while recognizing the health, safety, and educational goals of others in the campus community.

FOOTNOTES:

FN1.

Irene Bowen, [AHEAD of the ADA Access Curve: Part 8; A Case of a Different Animal: DOJ's Lawsuit against the University of Nebraska about Emotional Assistance Animals](#); The Alert, Electronic Newsletter of the Association on Higher Education and Disabilities (Dec. 2011).

FN2.

28 C.F.R. Part 35.102.

FN3.

28 C.F.R. Part 36.102; 36.104.

FN4.

28 C.F.R. Parts 35.136 (public entities); 36.302(c) (places of public accommodation). *See also* Appendix A to 28 C.F.R. Part 35 at 75 Fed. Reg. 56191 (September 15, 2010) ("Although there is no specific language in the 1991 title II regulation concerning service animals, title II entities have the same legal obligations as title III entities to make reasonable modifications in policies, practices or procedures to allow service animals when necessary in order to avoid discrimination on the basis of disability . . .").

FN5.

Final Rule on Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56164 (September 15, 2010); 28 C.F.R. Part 35.104; Final Rule on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg.

56250 (September 15, 2010); 28 C.F.R. Part 36.104.

FN6.

See 28 C.F.R. Part 35.104.

FN7.

Id.

FN8.

Joan Froling, [Service Dog Tasks for Psychiatric Disabilities](#), Sterling Service Dogs, July 30, 2009.

FN9.

See 28 C.F.R. Part 35.136.

FN10.

See 75 Fed. Reg. 56177; 28 C.F.R. Part 35.104.

FN11.

See Appendix A to 28 C.F.R. Part 35 at 75 Fed. Reg. 56193 (September 15, 2010).

FN12.

28 C.F.R. Part 35.139.

FN13.

75 Fed. Reg. 56178; 28 C.F.R. Part 35.136.

FN14.

34 C.F.R. Part 104.4.

FN15.

34 C.F.R. Part 104.44(b) (the purpose of which, pursuant to 34 C.F.R. 104.1, is "to effectuate section 504 of the Rehabilitation Act of 1973").

FN16.

Dawinder S. Sidhu, *Cujo Goes to College: On the Use of Animals by Individuals with Disabilities in Postsecondary Institutions*, 38 U. BALT. L. REV. 267 at 277-79 (date?) (citing December 2006 OCR internal guidance that directed enforcement offices to adopt the definition of "service animal" found in 28 C.F.R. Part 36.104 – the implementing regulation for Title III of the ADA).

FN17.

Department of Housing and Urban Development, Final Rule on Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63836 (October 27, 2008). Indeed, medical professionals have noted that when provided with an emotional support animal, depressed patients show decreased depression, children with severe attention deficit hyperactivity disorder show decreased aggression and improved attention, and patients with autism show increased socialization and attention span. See Kate A. Brewer, [Emotional Support Animals Excepted from "No Pets" Lease Provisions Under Federal Law](#), Animal Legal & Historical Center, Michigan State University College of Law (2005).

FN18.

Department of Housing and Urban Development, Final Rule on Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63835 (October 27, 2008).

FN19.

Persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability. 73 Fed. Reg. 63835 (Oct. 27, 2008).

FN20.

[U.S. Department of Housing and Urban Development, Memo from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs to FHEO Region Directors](#) (February 17, 2011).

FN21.

See, e.g., *Green v. Hous. Auth. Of Clackamas*, 994 F. Supp. 1253 (D. Or. 1998) (finding that a housing authority violated the FHA and Section 504 by refusing to accommodate a hearing impaired resident's dog that alerted him to noises, on the basis that the dog was not certified by a trainer).

FN22.

See, e.g., *Janush v. Charities Hous. Dev. Corp.*, 169 F. Supp. 2d 1133 (N.D. Cal. 2000) (holding that what is a reasonable accommodation is a fact-based, not species-based inquiry, and finding two birds and two cats could be a reasonable accommodation under the broadly worded federal law).

FN23.

73 Fed. Reg. 63835 (Oct. 27, 2008).

FN24.

42 U.S.C. 3604(f)(3)(b).

FN25.

24 C.F.R. Part 100.204.

FN26.

Franchi v. New Hampton School, 656 F. Supp. 2d 252, 260 (D.N.H. 2009). At least one other federal court has similarly held that a school dormitory is a "dwelling" subject to the FHA. See *United States v. Mass. Indus. Fin. Agency*, 910 F.Supp. 21, 26 n.2 (D. Mass. 1996) (granting summary judgment for plaintiffs on the issue of whether a residential school satisfies the meaning of dwelling in the FHA, but noting that the defendant did not dispute it).

FN27.

See [United States v. Millikin University](#), FHEO No. 05-06-0829-8 (September 18, 2009).

FN28.

See Bryan Greene, [University Housing and the Fair Housing Act](#), Disability Blog, February 28, 2011.

FN29.

Id.

FN30.

[Complaint in United States of America v. Univ. of Nebraska at Kearney](#) ¶ 60 (citing *Nondiscrimination on the basis of Disability in State and Local Government Services*, 75 Fed. Reg. 56164 (Sept. 15, 2010)).

FN31.

5 M.R.S.A. § 4553(9)(D) (2008).

FN32.

[The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973](#), U.S. Department of Education Office for Civil Rights (1995).

FN33.

Id. (emphasis added).

FN34.

28 C.F.R. Part 35.136 (Title II); 28 C.F.R. Part 36.302(c)(6) (Title III) (emphasis added).

FN35.

See U.S. Department of Justice, Civil Rights Division, Disability Rights Section, [Guidance on Service Animals](#) (July 2011) (emphasis added).

FN36.

[Alejandro v. Palm Beach State College](#), --- F.Supp.2d ---, 2011 WL 7400018 (S.D.Fla 2011).

FN37.

Interestingly, although the Nebraska-Kearney case arises under the Fair Housing Act, the Department of Justice cites the ADA Title II regulatory prohibition on requests for documentation (see Para. 61 of Complaint), yet omits any reference to the FHA regulations permitting the institution to require documentation, as discussed further below.

FN38.

Indeed, in commentary to the new regulations, DOJ noted: “Some commenters suggested that a title II entity be allowed to require current documentation, no more than one year old, on letterhead from a mental health professional stating the following: (1) That the individual seeking to use the animal has a mental health-related disability; (2) that having the animal accompany the individual is necessary to the individual’s mental health or treatment or to assist the person otherwise; and (3) that the person providing the assessment of the individual is a licensed mental health professional and the individual seeking to use the animal is under that individual’s professional care. These commenters asserted that this will prevent abuse and ensure that individuals with legitimate needs for psychiatric service animals may use them. The Department believes that this proposal would treat persons with psychiatric, intellectual, and other mental disabilities less favorably than persons with physical or sensory disabilities. The proposal would also require persons with disabilities to obtain medical documentation and carry it with them any time they seek to engage in ordinary activities of daily life in their communities—something individuals without disabilities have not been required to do. Accordingly, the Department has concluded that a documentation requirement of this kind would be unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA.”

FN39.

See Department of Housing and Urban Development, Final Rule on Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63835 (Oct. 27, 2008) (“Housing providers are entitled to verify the existence of the disability, and the need for the accommodation – if either is not readily apparent. Accordingly, persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability”).

FN40.

One study, run by a professor emeritus of psychology at Ohio State University, found that college students living with pets were less likely to report feeling depressed or lonely and that they believed that their pets helped them deal with tough times. The results of that survey also found that combating loneliness was the number one reason for having a pet. Jenna McGuire, [College Students Find Comfort in Their Pets During Hard Times](#), Research News, Ohio State University,

updated Dec 22, 2008.

FN41.

See U.S. Department of Justice, Civil Rights Division, Disability Rights Section, [Guidance on Service Animals](#) (July 2011).

FN42.

Id.

FN43.

See Appendix A, Subpart B to 28 C.F.R. Part 35.

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RESOURCES:

Government Agency Resources

[Guidance on Service Animals](#), U.S. Department of Justice, Civil Rights Division, Disability Rights Section (July 2011)

[New ADA Regulations and Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973](#), Sandra K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, U.S. Dep't of Housing and Urban Development (February 17, 2011)

[Final Rule on Nondiscrimination on the Basis of Disability in State and Local Government Services](#), 75 Fed. Reg. 56164 (September 15, 2010)

[HUD-DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act](#) (May 17, 2004)

[U.S. Department of Housing and Urban Development's Section 504 Resource Page](#)

[The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973](#), U.S. Department of Education Office for Civil Rights (1995)

Cases & Enforcement Actions

[United States of America v. Univ. of Nebraska at Kearney](#) (Complaint) (D. Neb. 2011)

[Alejandro v. Palm Beach State College](#), --- F.Supp.2d ---, 2011 WL 7400018 (S.D.Fla 2011)

[United States v. Millikin University](#), FHEO No. 05-06-0829-8 (September 18, 2009)

Other Resources

[AHEAD: Association on Higher Education and Disability](#) December 2011 Alert re: Service Animals

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