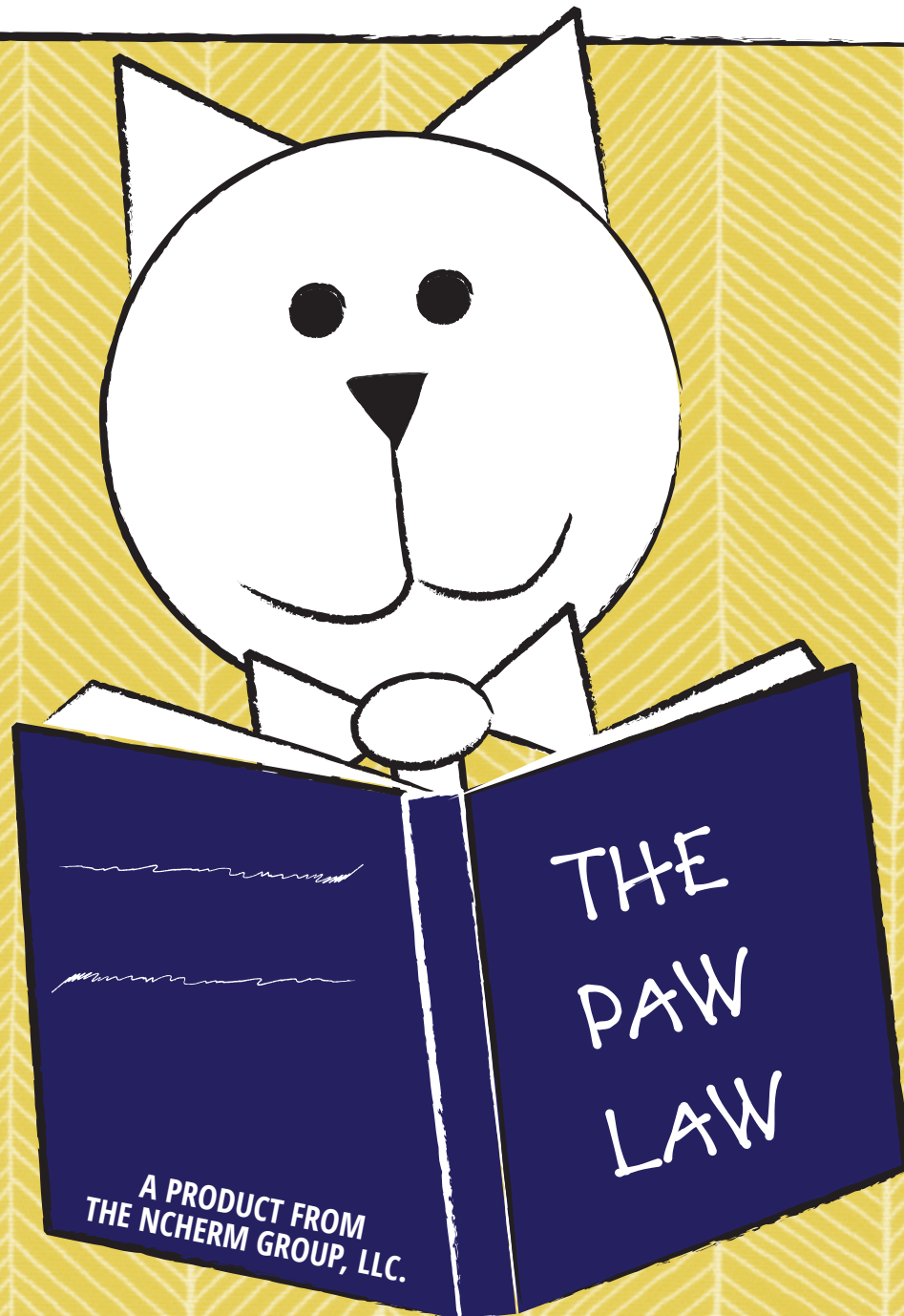


COLLEGE or ZOO?



Understanding the Law
Regarding Animals on Campus

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COLLEGE OR ZOO: UNDERSTANDING THE LAW REGARDING ANIMALS ON CAMPUS

INTRODUCTION

Most people are familiar with the concept of service animals. But as more college students with disabilities request to have animals on campus as accommodations, it's imperative that administrators have a deep understanding of laws governing not just service animals, but also of other animals frequently used to mitigate the effects of disabilities, including comfort, emotional support, and therapy animals.

There are three federal laws related to students' requests to animals on campus: 1) the Americans with Disabilities Act (1990); 2) the Fair Housing Act (1968); and 3) Section 504 of the Rehabilitation Act (1973). In this Audio Essentials Companion Text, we provide an overview of each one and their regulations related to animals as disability accommodations, particularly as they relate to requests to have animals on campus. We'll also cover the role of sound institutional policies and procedures in protecting your campus from lawsuits, and some key considerations for evaluating these types of requests.

THE EXPERTS



Schuster is a partner with The NCHERM Group, LLC., a recognized expert in civil rights law for education, and a former college administrator. She has served as the general counsel for Sinclair Community College; the senior assistant attorney general for the State of Ohio, representing colleges and universities; the associate general counsel for the University of Toledo; and the associate dean of students at The Ohio State University.

Schuster presents extensively on legal issues in higher education, and provides individual institutional consultation and training. One of her areas of expertise is disability law. She has also authored and co-authored numerous books for administrators. In addition, she is a former president of the Association for Student Conduct Administration, immediate past-president of the National Behavioral Intervention Team Association, and a long-time member of the National Association of College and University Attorneys.



Van Brunt serves as the senior executive vice president for professional program development at The NCHERM Group, LLC. He is also a past-president of the American College Counseling Association, president of the National Behavioral Intervention Team Association, and managing editor of *Student Affairs eNews*.

He taught at the college level for many years and now focuses on writing, conducting training seminars and conference presentations, and consulting with institutions through NCHERM. In addition, he is the author of *Harm to Others: The Assessment and Treatment of Dangerousness*, and *Ending Campus Violence: New Approaches in Prevention*.

THE AMERICANS WITH DISABILITIES ACT

» The law prohibits discrimination on the basis of disability, requiring colleges to provide *reasonable* accommodations to *qualified individuals with disabilities*, both physical and mental.

- A qualified individual with a disability is a person with a verified disability that significantly impacts one or more major life activities.
- The law's reasonableness framework means that your institution must modify its policies and procedures when it's reasonable for it to do so, or when it doesn't create an undue burden on the institution to fundamentally alter its programs or services. If you claim that providing an accommodation is unduly burdensome or fundamentally alters a program or service, understand that the burden of proof is high.



While most people would recognize a dog wearing a vest like this one as a service animal, individuals with disabilities who use service animals are neither required to place such identification on their animals nor produce certification of any kind.

» Entities covered under Titles II (which applies to state and local government agencies and services, and organizations receiving federal funding and/or benefits, including public colleges and universities) and III (which applies to public accommodations and commercial facilities and to private colleges and universities) of the ADA, including public and private postsecondary colleges and universities, must permit *service animals* to accompany individuals with disabilities *in all areas where members of the public are allowed* if it is reasonable to do so.

- A “service animal” under Title II and III is defined as a *dog* that is *individually trained* to do work or perform tasks for individuals with disabilities *related* to their disabilities.
 - Just dogs? Not exactly. While the definition of “service animal” mentions only dog, the ADA’s implementing regulations go on to note that miniature horses are also allowed. Miniature horses live longer than dogs, trigger fewer allergies, and are highly trainable.
 - Miniature horses must generally range between 24 and 34 inches to the shoulders and weigh between 70 and 100 pounds – about the same as a large Labrador retriever.
 - The regulations describe four assessment factors to help in making the determination of whether miniature horses can be accommodated in a facility. Those factors, which can equally apply to large dogs, are: 1) whether the animal is housebroken; 2) whether the animal is under the owner’s control; 3) whether the facility can accommodate the animal’s type, size and weigh; and 4) whether the animal’s presence will not compromise legitimate safety requirements.
 - Service animals don’t need to have undergone training at a facility or through a training service provider, but they must be individually

trained to perform work or a task directly related to an individual's disability. Examples of work and/or tasks that a service animal may perform include guiding the blind, alerting the deaf, pulling wheelchairs, opening doors, seeking help during seizures, reminding individuals to take medication, and calming a person during anxiety attacks.

- There must be a direct correlation between the work or task that an animal performs and an individual's specific disability and functional impairments for an animal to be covered under the ADA.
- Institutions must modify policies and procedures to allow service animals to accompany their owners whenever and wherever possible. However, it's not always reasonable to do so. For instance, a service animal in a culinary program classroom where food is prepared may pose a sanitation hazard. But classrooms, residence halls, common lounge areas and even cafeterias are places where it's generally reasonable to allow service animals.



Miniature horses are the only types of animals allowed by the ADA aside from dogs. The reason? They have a long lifespan, are very trainable, and tend to trigger fewer allergies than dogs.

- » Service animals do not need to have any kind of “official” certification or wear an identifying vest or anything else that sets them visibly apart.
- » Service animals must be licensed in your municipality as any other dog must be. This usually involves providing the municipality with proof of vaccination and paying a nominal fee.
- » Dogs and miniature horses whose sole function is providing comfort or emotional support are not service animals.
- » The ADA is very specific regarding how it defines a covered animal. Some state laws define “service animal” more broadly than the ADA, so be sure to know if your state has such a law on the books and what it says.

SERVICE ANIMAL TROUBLESHOOTING

- » **Care:** Individuals using service animals are responsible for their care, including picking up after them. Campus employees are not required to babysit students' animals. If animals are not being adequately cared for, animal cruelty statutes may come into play.
- » **Conflicts:** You may not ban the use of a service animal on the basis that the animal's presence creates a problem for someone else who may have allergies, phobias of certain kinds of animals, or religion-based reasons for avoiding proximity. Engage in an interactive process with both individuals to find mutually acceptable solutions, such as assigning one person to a different room, residence hall, or classroom. Keep in mind that neither individual has superior rights.
- » **Control:** Service animals must be under the control of their owners at all times through the use of leashes, harnesses and/or tethers, unless those devices interfere with the animals' ability to perform the work or tasks for which they have been trained. In cases where service animals cannot be under physical control, they must

be under some other method of control, such as voice or signal. However, an individual who uses a service animal may be asked to remove his animal from the premises if: 1) the animal is out of control and the owner doesn't take action to control it; or 2) the animal is not housebroken.

» **Documentation:** If an individual's disability and the service provided by an animal is obvious, asking for documentation can be construed as being discriminatory. If, however, one or both are not so clear, you may ask for supporting documentation from a physician or other service provider with expertise in the individual's specific condition. Institutions may ask for second opinions but must be prepared to pay for the second opinion.



A service animal must be allowed in places where food is served, such as school cafeterias. But that same animal can be excluded from food preparation areas like a culinary program kitchen if he compromises sanitation and/or safety, even if his job is to retrieve items that a student with a disability in such a program would need to participate in it.

» **Inquiries:** When it's not clear what service an animal provides, you may ask: 1) whether the animal is a service animal required due to a disability; and 2) what work or task the animal has been trained to perform. Do not ask the student to show you the service the animal provides, and do not ask for any special identification of the animal as a service animal or proof of training.

» **Monetary Issues:** You cannot charge a student with a service animal simply for the right to have that animal in a campus residence. You can charge a damage deposit only if such a deposit is required of all students. You also cannot charge students a higher price for a single room if they need a single room to accommodate the use of a service animal. And you cannot charge for relocating students to a better dorm, for instance, or for placing them in single rooms due to conflicts with other students over their animal's presence.

THE FAIR HOUSING ACT

» The law, which prohibits discrimination by landlords on the basis of *disability*, race, color, national origin, religion, sex and familial status in *dwellings*, allows individuals with disabilities to request and receive *reasonable accommodations*, including the use of *assistance animals* where they live, regardless of the presence of no-pet policies.

- A person has a disability under the law if he has: 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a history of having such an impairment; and/or 3) is regarded as having such an impairment.
- A "dwelling" is defined as any building, structure or portion thereof which is occupied, or designed or intended for occupancy, as a residence by one or more families.
 - The law has traditionally been interpreted to exclude transient housing, and since students are only temporary residents of campus housing, campus housing was not considered to be subject to the FHA. However, several years ago, a case involving the University of Nebraska at Kearney turned that argument on its head. The case involved a student who wanted to keep her dog,



Until a case involving the University of Nebraska at Kearney several years ago, college leaders often thought that campus housing was not covered under the Fair Housing Act's definition of "dwelling." The Kearney case made it clear that assistance animals must be allowed in dorms.

a miniature pinscher named Butch, in her dorm room with her. Her doctor provided supporting documentation of how the animal alleviated the symptoms of her disabilities, which included anxiety, panic attacks, and insomnia. The U.S. Department of Housing and Urban Development filed a lawsuit against the institution on her behalf. An administrative judge decided that the university violated the student's rights under the FHA and engaged in discriminatory behavior by not allowing Butch to live with the student in her dorm room.

- Within their residences, students and their animals must have access to all areas of the premises where other residents are normally allowed to go, unless doing so would create an undue financial or administrative burden for the institution or fundamentally alter the nature of the housing provider's services.
- The U.S. Department of Housing and Urban Development, in establishing the FHA's implementing regulations, adopted the same reasonableness framework that's central to the ADA.
- An "assistance animal" is defined as one who performs some work or task for a person with a disability, or offers emotional support to alleviate symptoms or effects of a disability. When you hear requests for emotional support, comfort or therapy animals, you are usually really hearing requests for assistance animals.
 - The law does not limit the kind of animal that can be used in this role. Breed, size and weight limitations may not be applied to an assistance animal. The FHA also does not limit the number of animals that an individual with a disability may use.
 - There must be a nexus between the service an animal provides and the individual's disability, just as with the ADA, for it to be considered an assistance animal under the FHA.
 - An assistance animal does not need to be individually trained. A dog who, by virtue of just being a dog also alleviates a student's anxiety can be considered an assistance animal.
 - While the law clearly states that assistance animals are not pets, an animal that is a pet can also be an assistance animal if the service it provides is linked to the individual's disability.
- Assistance animals must be licensed in your municipality as any other domestic animals must be. This usually involves providing the municipality with proof of vaccination and paying a nominal fee.

ASSISTANCE ANIMAL TROUBLESHOOTING

- » **Inquiries:** After receiving a request to have an assistance animal as a disability accommodation, a housing provider may ask: 1) Does the individual making the request have a disability (i.e., a physical or mental impairment that substantially limits one of more major life activities)?; and 2) Does the person requesting the use of an assistance animal have a disability-related need for the animal (i.e., Does the animal work, provide assistance, perform tasks or services for the benefit of the individual with a disability, or does it provide emotional support that alleviates one or more identified symptoms or effects of the disability)? If the answer to both is “yes,” the animals must be allowed in campus housing.
- » **Documentation:** If a disability is not readily apparent, colleges and universities may ask students to submit reliable documentation of their conditions and their need for the animal. If the condition is apparent or known but the institution is unsure as to how the animal can alleviate the symptoms or effects of the disability, it may request documentation of the disability-related need for the assistance animal.
- » **Care:** The owner of an assistance animal is fully and solely responsible for the animal’s care and maintenance. Housing providers may establish reasonable rules addressing the need for those using assistance animals to pick up after their animals. If animals are not being adequately cared for, animal cruelty statutes may come into play.
- » **Conflicts:** If an assistance animal poses a direct threat to the health or safety of others that cannot be mitigated or eliminated by another reasonable accommodation, a housing provider is not required to allow the animal as an accommodation. In addition, if a specific animal would cause substantial physical damage to others’ property and that risk cannot be reasonably mitigated, a request may be denied. However, such decisions must be based on individualized assessments, not on mere speculation or fear, or evidence about damage or harm caused by other animals. Finally, if students cannot study, sleep and/or otherwise enjoy the use of their campus residences because another’s assistance animal barks, howls, screeches or otherwise causes a disturbance, that animal does not have to be allowed.
- » **Control:** If a student is not in his residence hall, his assistance animal must be crated or otherwise confined.
- » **Monetary issues:** You may not require payment of a fee or deposit even if a fee or deposit is applied to residents with pets under a policy allowing students to have pets.



Assistance animals are not limited to dogs and miniature horses, as service animals are. And they do not have to be trained to perform specific work or tasks if their mere presence and the comfort they provide alleviates the symptoms or effects of an individual’s disability.



Section 504 of the Rehabilitation Act applies to any college and university receiving federal financial assistance.

SECTION 504 OF THE REHABILITATION ACT

- » This statute provides that no *qualified individual with a disability* should, on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program *receiving federal financial assistance*.
 - A person with a disability is any person with a physical or mental impairment that substantially limits one or more major life activities. However, someone who is regarded as having such an impairment is also protected under this law.
 - In the campus setting, a qualified individual is one who can meet, with or without accommodations, the fundamental standards and criteria set forth by an institution.
 - Because the vast majority of postsecondary institutions receive some form of federal financial assistance, they are required to comply with Section 504 and its implementing regulations.
- » Section 504 requires that institutions make reasonable accommodations to their policies, programs, services or workplaces to allow qualified individuals with disabilities to fully participate in a program, take advantage of a service, or perform a task.



Well-written policies that are consistent with the law can help you avoid legal liability when evaluating requests to have animals as disability accommodations on campus, particularly in situations where you may have to deny such requests.

THE ROLE OF POLICIES AND PROCEDURES

Having clear and well-written policies and procedures to fall back on is critical. And be sure they are enforced consistently. While each student's request should be evaluated on an individual basis, one size does fit all in terms of ensuring that you are applying the same standards in the evaluation of requests for animals as accommodations. That way, while one student may be allowed to have a cat and another one isn't, you're not making such decisions arbitrarily, but rather applying the same process to your decision-making. It's also helpful to have your guidelines readily available, so that students and others can gain an understanding of how requests are evaluated.

In addition, policies should also address history of disability and multiple documentation requests. Some disabilities are temporary, or have effects that wax and wane over time. But others, like blindness, are pretty constant. So while you may ask a student with anxiety for documentation in his sophomore year even though he submitted documentation in his freshman year for the use of an animal as an accommodation, doing so for the blind student might be considered unduly burdensome and discriminatory on your part. Finally, it's important that your policies clarify that accommodations may not fundamentally alter the nature of your programs and services. You might even consider providing some examples as references.

CONCLUSION

Having a solid understanding of the law provides a great starting place for making decisions related to requests for animals on campus. Institutional policies and procedures can also be invaluable. But don't stop there. When confronted with confusing situations, look at case law, turn to colleagues at other institutions, and engage in discussions with your legal counsel. Engaging in an interactive process with students will also go a long way toward helping you make sound decisions that will ensure equal access for students and avoiding institutional liability. Start from a place of caring, and if you're denying a request, demonstrate why your decision is reasonable and then work to find another solution to ensure access and equity.

FOR MORE INFORMATION

An on-demand, online training titled, “Hamsters in the Hallways: Navigating the Law Regarding Animals on Campus,” is also available for purchase through The NCHERM Group, at www.ncherp.org.

ABOUT THE AUDIO ESSENTIALS SERIES

The Audio Essentials series is produced and published by The NCHERM Group, LLC. New episodes will become available for purchase at www.ncherp.org/store as they are created, so check back regularly for new episodes on the most pressing issues facing college faculty, staff and administrators.



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