

*Accommodating Service and Assistance
Animals on Campus*

AICUM Fall Symposium: Emerging Challenges to Independent Higher Education
Presented by David M. Felper
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Applicable Laws

- Titles II & III of the Americans with Disabilities Act of 1990 ("ADA")
- Section 504 of the Rehabilitation Act of 1973 ("Section 504")
- Fair Housing Act ("FHAct")
- Massachusetts Laws (M.G.L. c. 272, § 98A & M.G.L. c. 151B, § 4)

Applicable Laws: ADA, FHAct, Section 504

	ADA	FHAct	Section 504
Applies To:	Public accommodations; public universities; commercial facilities	Housing (likely includes dormitories)	Educational Facilities and Housing
Animals Covered:	"Service Animals": <u>Dogs</u> trained to do work or perform tasks (<u>not</u> for emotional support)	"Assistance Animals": <u>Any animal</u> used to alleviate symptoms of a disability (<u>including</u> emotional support)	Service Animals <u>and</u> Assistance Animals
Standard:	Service Animals <u>must</u> be allowed in covered facilities	Assistance Animals allowed as a "reasonable accommodation" of a disability	Service Animals and Assistance Animals allowed as a "reasonable accommodation" of a disability in housing

ADA: Service Animal Requirements

- Service Animal is a dog individually trained
 - to do work or perform tasks
 - directly related to a person's disability
- Service animal under the ADA does not include dogs whose sole function is to provide comfort or emotional support

ADA: Service Animals Requirements

- Service Animal Control
 - Shall have a harness, leash or other tether unless handler is unable to, or the use would interfere with animal's performance of work; then
 - The service animal must be otherwise under the handler's control (voice control, signals or other effective means).
- May ask an individual to remove a service animal if:
 - The animal is out of control;
 - The animal is not housebroken; or
 - The animal poses a direct threat to the health or safety of others that cannot be abated

Service Animals: Where Allowed

- Service Animals (under ADA)
 - Everywhere public normally allowed
 - Exceptions
 - Working kitchen
 - Laboratories, sterile environment
 - Cannot isolate persons with service animals from other patrons, or treat them less favorably (ADA Guidance)

Service Animals: Documentation

- Service Animals (under ADA)
 - Shall **not** ask about the nature or extent of a person's disability
 - Shall **not** require medical documentation, or proof that the animal has been certified, trained or licensed as a service animal
 - Make only two inquiries to determine whether an animal qualifies:
 1. If the animal is required because of a disability
 2. What work or task the animal has been trained to perform

Section 504 of the Rehabilitation Act

- Section 504 applies to any institution receiving federal financial assistance
- Prohibits institutions from excluding, denying benefits to, or otherwise discriminating against individuals on the basis of handicap.
 - For example, institutions “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] education program or activity.” (34 C.F.R. Part 104.44(b))
- Generally construed consistently with the ADA

Fair Housing Act

- Housing providers are to evaluate a request to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests:
 - Does the person have a disability (“substantially limits one or more major life activities”)?
 - Does the person have a disability-related need for an assistance animal?

Fair Housing Act: "Reasonable Accommodation"

- Housing Program does not have to allow assistance animal if allowing the animal:
 - would impose an undue financial or administrative burden
 - would fundamentally alter the nature of the housing program or services
 - if occupancy would pose a threat to the health and safety of others, or result in substantial physical damage to property of others

Section 504 in Housing: “Reasonable Accommodation”

- HUD Regulations permit “Assistance Animals” in housing under Section 504
 - Similar to standard under FHAct: “reasonable accommodation” of requests for assistance animals in institution housing
- Applies to colleges or universities receiving financial assistance from HUD

FHAct and Section 504: "Assistance Animal"

- "Assistance animal" is not defined
 - Any type of animal without restrictions on breed, size, or weight
 - Animal need not be trained for a specific purpose
- But: Specific animal must not pose a threat to the health or safety of others living in the housing, or cause substantial physical damage to the property

FHAct and Section 504: Evaluating Accommodation Requests

- Accommodation requests may be oral or written
- May not refuse a request for accommodation if requestor does not follow formal procedures
- Response must be “prompt” and without “undue delay”
- May request information necessary to evaluate if reasonable accommodation is needed because of a disability

Assistance Animals: Documentation

- Assistance Animals - May request information:
 - To verify disability (if disability not obvious); and
 - To show relationship between disability and accommodation
- In most cases may not request individual medical records
- May not request detailed documentation regarding the person's disability

Assistance Animals: Where Allowed

- Dwelling units, including common areas
 - Houses and apartments
 - Group homes
 - Homeless shelters
 - Residential facilities
 - Dormitories

HUD Enforcement Actions – Fair Housing Act

- U.S. v. Milliken University (2009)
 - student with seizure disorder and visual impairment housed in new dorm
 - Asked to move to a different dorm when she acquired service animal
 - HUD said no evidence dog was a threat to health or safety of others
 - Settled with consent order (2011): reimbursed student \$4,437, and agreed to update all written policies and training materials

HUD Enforcement Actions – Fair Housing Act

- Univ. of Nebraska at Kearney (2013)
 - Apartment complex owned by University
 - Student suffered from depression, had a 4-lb miniature pinscher therapy animal
 - University required animal to be “trained” and “certified” as a service animal
 - University requested documentation required for accommodations under ADA
 - HUD said UNK not permitted to request detailed information about treatment, limitations, medications
 - Federal Judge ruled that University-owned housing is subject to the FHAct

HUD Enforcement Actions: Fair Housing Act

- Kent State University (August 2014)
 - University refused to allow student suffering from anxiety attacks to keep her dog (an untrained emotional assistance animal) in her university apartment
 - Suit claims that Kent State treats students with psychological and emotional disabilities less favorably than other types of disabilities

Massachusetts Laws

- M.G.L. c. 272, § 98A
 - Businesses that serve the public are required to allow people with disabilities to bring service animals wherever customers are generally allowed
 - Subject only to generally applicable conditions of all customers; may not be charged extra fee for service animal
 - *Analogous to ADA*

Massachusetts Laws

- M.G.L. c. 151B, § 4(6) and (7A)
 - Massachusetts' general housing discrimination law
 - Owners of housing may not refuse to make a "reasonable accommodation" allowing disabled person equal opportunity to use and enjoy the dwelling
 - Unless it would impose an "undue hardship" on the owner
 - *Analogous to FHAct and Section 504*

Massachusetts Laws

- MCAD v. Brighton Gardens Apts (2011)
 - Finding violation of M.G.L. c. 151B, § 4 where landlord refused to amend “no-pets” policy to allow tenant with disability to keep an emotional support dog
 - Landlord paid \$25,000 in emotional damages and \$5,000 civil penalty to the Commonwealth

Questions?

Thank you for attending!

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