

Emotional Support Animals: What You Need To Know

WITH BRICKER & ECKLER LLP

Joshua
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Melissa
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Live Forum

To ask a question using the chat function:

The screenshot shows the Cisco WebEx Event Center interface. The main video area displays a red background with the title "Emotional Support Animals: What You Need To Know" and "WITH BRICKER & ECKLER LLP". Below the title are two speakers: Joshua Nolan and Melissa Bondy. On the right side, there is a sidebar with "Participants" and "Q&A" sections. The "Q&A" section shows a list of questions and a "Send" button. Red annotations highlight the "Type your question here" input field and the "Send" button.

Event Info: 10600802_1

01: Live Forum for AK&A

**Emotional Support Animals:
What You Need To Know**
WITH BRICKER & ECKLER LLP

Joshua Nolan

Melissa Bondy

Participants

Speaking:

Panelists: 1

TG Traci Graham (Host)

Attendees:

CC

Q&A

All [2] My Q&A (1)

Carole Chidester - 3:52 PM

Ask: All Panelists

Type your question here

Send

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Animals are a part of campus life

- **Lab Animals**
- **Mascots**
- **Law Enforcement Animals**
- **Veterinary Clients**
- **Pets**
- **Therapy Animals**
- **Service Animals**

Emotional Support Animals: What You Need To Know

- **Understanding relevant laws.**
- **Outlining an institution's responsibility.**
- **Handling common problems.**

Three Primarily Relevant Laws

- The ADA (Title II and III).
- Section 504 of The Rehabilitation Act of 1973.
- Fair Housing Act.

Each governs the requirements and procedures related to service animals and emotional support animals.

Definitions

- Service Animals
- Emotional Support Animals (ESAs)
- Disability

Definitions

What is a Service Animal? (ADA)

- Any dog (or miniature horse)... trained to perform work or perform tasks.
- “directly related to the handler’s disability.”
- “The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”

Definitions

What is a Service Animal? (ADA)

- Two questions are permitted by a College or University asked to accommodate:
 1. What is the disability (if not obvious)?
 2. What work/task is the service animal trained to do?

Definitions

What is an Emotional Support Animal (ESA)?

“An animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability. ”

Definitions

What is a disability?

- Physical or mental impairment;
- That substantially limits one or more major life activities;
- A person who has a history or record of such an impairment; or
- A person who is perceived by others as having such an impairment.

Definitions

What is considered a major life activity?

- Caring for ones self; Performing manual tasks; Seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working;

All of these things implicate college life.

FHA Prohibits Discrimination in “sale or rental of dwelling”

It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale, or rental of a dwelling, or other provision of services in connection with such dwelling.

- Residence halls = “residential dwelling” under Housing and Urban Development (HUD) Guidance.

Ten Frequently Asked Questions

Question 1: What are the college's obligations under the FHA?

Residence halls are covered under FHA:

- HUD Guidance has stated that “residential dwelling” expressly included dormitories.
- AND to the “public and common use areas”

Question 2: How should you analyze ESA requests?

- Does the student have a disability?
- Is the animal necessary in affording the student the opportunity to use and enjoy their living space?
- Is there an identifiable relationship, or nexus, between the requested accommodation and the student's disability?

Question 3: What if the disability is not obvious?

If disability OR need not obvious, the college *may* seek additional documentation:

- *Health Care Professional (doctor, counsel , social worker), or “reliable third party” (DOJ Guidance 2004/2008)*
- *Physician, psychiatrist, mental health professional may provide evidence that ESA alleviates symptoms of disability (HUD guidance 2013)*

Question 3: What if the disability is not obvious?

Common issues with residential campuses:

- *Student A arrives on campus on first-year move in day with an ESA (a dog wearing a blue “work vest”). Residence Life staff have no record of Student’s need for an ESA. Student did disclose on housing form that Student is in the Army Reserve and suffers from PTSD.*
- *What do you do?*

Question 4: What is a reasonable accommodation under the FHA?

A change, exception, or adjustment to a rule, policy, practice or service that may be necessary to provide a person with a disability with an equal opportunity to use and enjoy the dwelling.

- E.g. Modification of No Pet Policy.

Question 5: Does the FHA restrict the type of animal that can be an ESA?

- **No. There are no restrictions on the types of animals**
- **There is no training requirement (unlike ADA)**
- **TIP: DO NOT confuse ADA Service Animal restrictions or training requirements (review forms, policies, etc.)**

Question 5: Does the FHA restrict the type of animal that can be an ESA?

- **BUT other non-discriminatory restrictions:**
 - **Premises liability carrier restrictions on the items prohibited in residence halls that might impact ESAs (snakes/other reptiles needing heat lamps)**
 - **State and local law restrictions on wild, dangerous, or exotic animals**
 - **(R.C. 935.01, et seq.) – restrictions on certain animals (including snakes)**

Question 6: What restrictions can be placed on ESAs?

An ESA need not be approved if:

- a) It poses a direct threat to the health or safety of others (e.g., food or surgical facilities, or other individuals with allergies or phobias)
- b) It would cause substantial damage to property (e.g., size animal is prohibitive for residence hall)*
- c) It is an undue financial or administrative burden
- d) Permitting it would cause a fundamental alteration to program (e.g., would lower performance standards)
- e) The owner is unable to care for the animal

Question 6: What restrictions can be placed on ESAs?

Put the criteria in your Accommodation Policy:

- B. However, for all requests for Assistance Animals, Disability Services shall nonetheless consult with Residence Life in making a determination on a case-by-case basis of whether the presence of an Assistance Animal is reasonable. A request for an Assistance Animal may be denied as unreasonable if the presence of the animal: (1) imposes an undue financial and/or administrative burden; (2) fundamentally alters University housing policies; and/or (3) poses a direct threat to the health and safety of others or would cause substantial property damage to the property of others, including University property.

Question 6: What restrictions can be placed on ESAs?

Put the criteria in your Accommodation Policy:

- C. UNK may consider the following factors, among others, as evidence in determining whether the presence of the animal is reasonable or in the making of housing assignments for individuals with Assistance Animals:
1. The size of the animal is too large for available assigned housing space;
 2. The animal's presence would force another individual from individual housing (e.g. serious allergies);
 3. The animal's presence otherwise violates individuals' right to peace and quiet enjoyment;
 4. The animal is not housebroken or is unable to live with others in a reasonable manner;
 5. The animal's vaccinations are not up-to-date;
 6. The animal poses or has posed in the past a direct threat to the individual or others such as aggressive behavior towards or injuring the individual or others; or
 7. The animal causes or has caused excessive damage to housing beyond reasonable wear and tear.

Question 7: Can you charge an extra security deposit for an ESA?

- **No.**
- **The College cannot condition the provision of a reasonable accommodation on the payment of a fee or deposit.**
- **Damages? Beyond wear and tear.**

Question 8: Does a College or have to permit an ESA in its summer programming?

It Depends...

- HUD guidance does indicate that the FHA applies to less-than permanent housing (e.g., summer bungalows and seasonable cabins) but not to “short-term” housing (e.g., motels and bed and breakfasts)
- In one case, a homeless shelter, where the evidence revealed that the average stay was less than 17 days, the definition of “dwelling” did not apply.
- *Discuss this situation with legal counsel*

Question 9: Can a College have an animal-free residence hall/building?

It Depends...

- If all other aspects of the dorm are equal (age, amenities, proximity to campus, etc.) then an animal free dorm is probably permissible.
- Allergen free dorms may, in fact, be necessary for some students with allergies, or even severe phobias (ADA protections here)

TIP: A single residence hall ("Animal House" or "The Arc") for all ESAs, etc. can be problematic.

Question 10: How can a student challenge an ESA decision?

- **Appeal process in your policy**
- **DOJ and HUD (FHA claims)**
 - See Kent State and Univ. of Nebraska at Kearney lawsuits and settlements, which resulted in policy revisions, training requirements, and \$100K awards to Plaintiffs.
 - OCR (enforcement of ADA/504 claims) accepted a case challenging “blanket prohibition on ESAs in non-residential buildings”

Take Home Tips:

- Review your policies and procedures:
 - Residence life, admissions, disability services coordinator
- Engage in an interactive process:
 1. Take the request;
 2. Engage in interactive process (gather information, meet with stakeholders, DOCUMENT the Process);
 3. Assess reasonableness; and
 4. Make a decisions on a CASE BY CASE basis.
- Seek advice before situation becomes volatile.

Questions?



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