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PUBLIC POLICY

THE THERAPY ANIMALS IN CAMPUS HOUSING: UNITED STATES GOVERNMENT REGULATIONS

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INTRODUCTION

A 2011 Housing and Urban Development complaint involving a student who wished to have a therapy animal in her campus apartment brought to the fore an issue that has been problematic for campus housing professionals for years. Are college and university housing professionals required to accommodate students with therapy animals in campus housing? How are therapy animals defined, and how are they different from assistance animals (such as a seeing-eye dog)? What regulations govern these issues? This paper seeks to provide background information on these issues, so housing professionals in the United States can, with the assistance of legal counsel, make informed decisions regarding requests for accommodations for therapy animals.

LEGAL BACKGROUND

The Department of Justice (DOJ) published [Revised ADA Regulations Implementing Title II and Title III](#) in the Federal Register, September 15, 2010 (corrections were published in the Federal Register on March 11, 2011) taking effect on effect on March 15, 2011. Title II, 28 CFR Part 35, governs state and local government services, programs, and activities, **including public institutions.** Title III, 28 CFR Part 36, **governs public accommodations and commercial facilities, including nonprofit institutions.** **The two sets of rules parallel each other and have various sections that affect colleges and universities regarding requirements for individuals defined as having disabilities.**

The Department of Housing and Urban Development's [Section 504 of the Rehabilitation Act of 1973](#) prohibits discrimination based on disability.

Title II and Title III defines "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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. 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.

The Department's position is based on the fact that the title II and title III regulations govern a wider range of public settings than the housing and transportation settings for which the Department of Housing and Urban Development (HUD) and the DOT regulations allow emotional support animals or comfort animals. The Department recognizes that there are situations not governed by the title II and title III regulations, particularly in the context of residential settings and transportation, where there may be a legal obligation to permit the use of animals that do not qualify as service animals under the ADA, but whose presence nonetheless provides necessary emotional support to persons with disabilities. Accordingly, other Federal agency regulations, case law, and possibly State or local laws governing those situations may provide appropriately for increased access for animals other than service animals as defined under the ADA. Public officials, housing providers, and others who make decisions relating to animals in residential and transportation settings should consult the Federal, State, and local laws that apply in those areas (e.g., the FHAct regulations of HUD and the ACAA) and not rely on the ADA as a basis for reducing those obligations. (Title II, 28 CFR Part 35)

Title III, 28 CFR 36.103, provides the following:

(a) Rule of interpretation. Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) Section 504. This part does not affect the obligations of a recipient of Federal financial assistance to comply with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued by Federal agencies implementing section 504.

(c) Other laws. This part does not invalidate or limit the remedies, rights, and procedures of any other Federal, State, or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

These provisions remain unchanged by the final rule. The Department recognized that public accommodations subject to ADA may also be subject to . . . Section 504 of the Rehabilitation Act of 1973 and other Federal statutes that prohibit discrimination on the basis of disability in the programs and activities of recipients of Federal financial assistance.

Public accommodations that are subject to the ADA as well as other Federal disability discrimination laws must be aware of the requirements of all applicable laws and must comply with these laws and their implementing regulations. Although in many cases similar provisions of different statutes are interpreted to impose similar requirements, there are circumstances in which similar provisions are applied differently because of the nature of the covered entity or activity, or because of distinctions between the statutes.

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) and the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3631)) authorize the owner to verify that an animal qualifies as a reasonable accommodation and qualifies an animal as a reasonable accommodation if: (1) An individual has a disability, as defined in the Fair Housing Act or Section 504, (2) the animal is needed to assist with the disability, and (3) the individual who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the assistance that the animal provides.

EXPLANATION

Both the Fair Housing Act and Section 504 require that in order to qualify as a reasonable accommodation, the requester must have a disability, and there must be a relationship between the requested accommodation and that person’s disability. HUD’s regulations and policies pertaining to reasonable accommodation were constructed specifically to address housing and, furthermore, were enacted prior to the development and implementation of the ADA regulations. Thus, the requirements for assistance/service animals must be evaluated in the appropriate context of housing, and are independent of the ADA regulations that were formulated to meet the needs of persons with disabilities in a different context and were adopted subsequent to HUD’s regulations.

In other words, one uses a dwelling (a non-public place, regardless of the ownership of the dwelling) differently than one uses a public space, such as a classroom building or grocery store. A person with a seeing-eye dog needs the dog to fully access and use both his or her home and a public space. A person who has a dog that relieves depressive episodes does not need the dog to fully utilize a public space, but

the dog does help him or her make full use of a dwelling, a private space. This seems to be the way the U.S. Department of Housing and Urban Development interpreted the regulations in the case that was charged by HUD in October 2011 against the University of Nebraska – Kearney (UNK). HUD charged that UNK denied the request for a therapy animal in campus housing after the student established a need for the therapy animal. Per the charge, UNK requested additional information that was unnecessary to evaluate the student’s request. UNK also took the position that the Fair Housing Act did not apply to university housing. On March 23, 2011 the Department of Justice announced that it had filed a lawsuit against UNK for violating the Fair Housing Act by discriminating against students with disabilities. An institution must consider both ADA and Fair Housing Act requirements in making a decision as to grant an accommodation for a disability in campus housing.

CONCLUSION

We expect readers, with administration and legal counsel, to use this paper as a starting place for discussions and decision-making regarding accommodation requests from residents or potential residents with therapy animals. This paper presents regulations and events as we know them, to this date.