Puppies, Ponies, Pigs, and Parrots

Policies, Practices and Procedures in

Pubs, Pads, Planes, and Professions

(Public Places, Housing, Transportation and Employment)

Laura Rothstein ©[[1]](#footnote-1)

*Animals as Living Accommodations*

(co-Sponsored by the AALS Sections on Disability Law, and Law and Mental Disability)

**Friday, January 6,  2017, from 10:30-12:15 p.m.**. **San Francisco Hilton Union Square**

**[FOCUS ON Public accommodations, transportation, employment and housing}**

**Overview**

 Although we are a pet loving country, unlike Europe, our culture frowns on having these guests in public places. For many years, the exception was the traditional “seeing eye” dog – the German Shepherd or the Lab. The increasing presence of dogs and other animals in public places is a result of the Americans with Disabilities Act, a federal law passed in 1990, that prohibits places of public accommodation and public service programs to discriminate on the basis of disability. It also requires these programs to provide reasonable accommodations, which can take the form of waiving prohibitions on animals by the operators of these public places and making other accommodations to policies related to animals.

 College campuses are unique places of accommodation because they involve students (and employees and visitors) who use space in a more intense way than the short term visitor to a shopping mall or restaurant or even a hotel. Campus use can include housing, which raises special issues.

 Although recent federal regulations provide some clarification about what is legally required with respect to service and emotional support (or comfort) animals, there are still a number of uncertainties about what is required in any setting. This is particularly true for college campuses. Institutions of higher education who are proactive on developing policies are less likely to have to handle issues that will inevitably arise without thoughtful planning.

 This presentation provides the following information about what is required under the Americans with Disabilities Act and the Rehabilitation Act in various settings related to higher education (including off campus programs facilitated or organized by the institution). It will present the following:

* ADA and Section 504 of the Rehabilitation Act – basic requirements
* Who is Protected? – Definition of disability
* Reasonable Accommodations – what is required with respect to modifying policies, practices and procedures that might be affected by prohibition of animals generally
* **What** are the current issues and why? Although housing presents the most challenges, there are other areas of uncertainty.
* **Who** might be seeking allowance of animal on campus and **where**?

 Students

Campus – classrooms, libraries, food service

Events – performance and sports events

Housing

Fraternities and sororities

Employment (work study, etc.)

Off campus trips

Programs abroad?

Faculty and Staff

In workplace

On campus

Visitors to campus

Clinics

Sports and performance events

Graduation

Clinics

* What **Purpose** for Animals?

Service animals

Emotional support animals (ESAs)

 (some labels include companion, comfort, therapy, psychiatric)

* What **Kinds** of Animals?

 Dogs

Miniature horses

Cats

Potbellied pigs

Birds (including turkeys?)

Ferrets, rabbits, gerbils, sugar gliders

Snakes

* Principles and Framework for Planning

Holistic approach – include housing, alumni and events, food services, and student affairs

(perhaps health care program representatives)

Establishing what is “fundamental” or “essential” for the program – by appropriate officials

Policies that allow for individualized assessment as appropriate

Having one single office handling animals on campus issues

Interactive decisionmaking

Communication of policies to individuals with disabilities

Communication of policies to faculty, staff, and other administrators and appropriate training

**Statutory Overview**

 Both Rehabilitation Act and ADA prohibit discrimination on the basis of disability and require resonable accommodations. Reasonable accommodations can include providing auxiliary aids and services (such as interpreters) and modifying policies, practices, and procedures. Allowing animals when ordinarily they are not permitted would be such a modification to a rule to be considered. Individuals are only entitled to protection and accommodations if they meet the definition of disability.

 The definition covers those with substantial limitations to major life activities, having a record of such an impairment, or being regarded as having such an impairment. Individuals seeking to have animals allowed as an accommodation would generally fit under four major categories – 1) mobility impairments (where the animal assists with retrieval, balance, pulling, etc. – dogs and monkeys); 2) sensory impairments (seeing eye dogs; hearing assistance dogs; miniature horses); 3) health impairments (alert to seizures or insulin sugar drops); and mental health (animals that “do” something such as nudging a person in stress and those that provide emotional support/comfort by their presence).

 Whether the person has a disability is not generally an issue for the first three, but it may be for those requiring emotional support animals. This can raise questions of what documentation is permissible.

 The 2008 Amendments to the ADA provided clarification that the statutory definition was intended to be read broadly. Case law after the amendments seems to indicate fewer cases where the disability itself is the issue and more focus on whether the person is otherwise qualified and on the reasonableness of the accommodation.

 In light of media attention to individuals who abuse animal accommodation protections, some states have enacted provisions penalizing those who do. Some states also expand the types of animals considered for these purposes.

States that cover more than dogs – (13) Illinois, Idaho, Indiana, Maine, Minnesota, Montana, Nevada, New Mexico, North Carolina, North Dakota, South Carolina, Washington, West Virginia

States that waive dog license fees for service animals – (8) Kentucky, Louisiana, Massachusetts, New Mexico, Ohio, Oregon, Virginia, West Virginia

States with provisions for criminal (usually misdemeanor penalties) for fraud ($1,000 fine and even jail, for example) (16) California, Colorado, Florida, Kansas, Maine, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Texas, Utah, Washington State (only covers physical disabilities?)

**Regulations and Regulatory Guidance**

Regulations promulgated since 2008 have provided much more detail about the definition of disability, documentation, and accommodations.

* Department of Justice

Regulations focused on a number of specific issues were issued in 2010 These provide a great deal of guidance on what is required and what is not, but they still leave open some unsettled questions. In July 2015, the Department of Justice released an 8 page guide about service animals. United States Department of Justice, Frequently Asked Questions About Service Animals and the ADA, Civil Rights Division, July 20, 2015, available at [http://www.ada.gov/regs2010/service\_animal\_qa.pdf](https://exchange.louisville.edu/owa/redir.aspx?SURL=R7IlCzz1Emc2QlyBOMX7IlcylZ0TQSXI46UU__ucRR9nSdkLyy3TCGgAdAB0AHAAcwA6AC8ALwB1AHIAbABkAGUAZgBlAG4AcwBlAC4AcAByAG8AbwBmAHAAbwBpAG4AdAAuAGMAbwBtAC8AdgAyAC8AdQByAGwAPwB1AD0AaAB0AHQAcAAtADMAQQBfAF8AdwB3AHcALgBhAGQAYQAuAGcAbwB2AF8AcgBlAGcAcwAyADAAMQAwAF8AcwBlAHIAdgBpAGMAZQAtADUARgBhAG4AaQBtAGEAbAAtADUARgBxAGEALgBwAGQAZgAmAGQAPQBBAHcATQBGAGEAUQAmAGMAPQBTAGcATQByAHEAMgAzAGQAYgBqAGIARwBYADYAZQAwAFoAcwBTAEgAZwBFAFoAWAA2AEEANABJAEEAZgAxAFMATwAzAEEASgAyAGIATgByAEgAbABrACYAcgA9AE0AaABTAFoAMwA0AEIAUQBnAFYAeABQADUAQwBtAFMANABIAEQAMwBkAFIAZwBNAEUANQAyAE8AVABOAGMAcAB4AE0AZQBTAEIAcwBVADQATgA4AFEAJgBtAD0AcwAxAF8AbABMAFYAOQB2AE0ANwBoADkAWQBDAHYAYgBhAFoAVgBzAE0AQwBZADkATwAzAEYASAAyAHgAdQBrAE4AbABnAGMAMgA1AG8AYQBpAGYAVQAmAHMAPQBIAGQAMABCADMAdgBpAEMAYQBqAGYAbgBnAHIAWAB2AG0AcgAyAG4AMABnAFIAWQBtAHgAQgBTAGMANAA2AC0AUwBLAFAAWQAzAFQASwBpAFoAbQBNACYAZQA9AA..&URL=https%3a%2f%2furldefense.proofpoint.com%2fv2%2furl%3fu%3dhttp-3A__www.ada.gov_regs2010_service-5Fanimal-5Fqa.pdf%26d%3dAwMFaQ%26c%3dSgMrq23dbjbGX6e0ZsSHgEZX6A4IAf1SO3AJ2bNrHlk%26r%3dMhSZ34BQgVxP5CmS4HD3dRgME52OTNcpxMeSBsU4N8Q%26m%3ds1_lLV9vM7h9YCvbaZVsMCY9O3FH2xukNlgc25oaifU%26s%3dHd0B3viCajfngrXvmr2n0gRYmxBSc46-SKPY3TKiZmM%26e%3d)

DOJ regulations only require inclusion of dogs (and miniature horses) and only allow for minimal documentation. The following two questions can be asked:

 Is the dog a service animal required for a disability? (may not ask what the disability is)

 What work or task has the dog been trained to perform?

 (and perhaps only if it is not apparent)

Cannot ask for official “documentation” or require the dog to wear a special coat or blanket.

Animal must be under control.

Applicability to university housing:

28 C.F.R. § 35.151 (f) (Title II) and §36.406(f) (Title III) – indicate that campus housing is subject to Titles II and Title III

Fraternity and sorority housing MAY fall under Private Club Exception, 42 U.S.C. § 12187, although that might depend on how Greek life is regulated or otherwise facilitated at individual campuses.

* Department of Education has not issued specific regulations related to animals.
* Department of Housing and Urban Development has not issued specific regulations related to animals. HUD guidance, however, indicates that university housing is subject to the Fair Housing Act and provides guidance on documentation requests.

<http://www.justice.gov/opa/pr/2011/November/11-crt-1532.html> (on service animals and assistance animals in housing and HUD-funded programs)

* Equal Employment Opportunity Commission has regulations on ADA and employment, but does not specifically reference animals as an accommodation.

<http://www.eeoc.gov/policy/docs/accommodation.html> (general guidance on reasonable accommodations in employment settings); <http://www.eeoc.gov/facts/restaurant_guide.html> (guidance regarding employees in food service settings)

* Department of Transportation has specific regulations about animals for air travel, pursuant to the Air Carrier Access Act, but not other transportation. These could be relevant for individuals traveling for university purposes or activities (including summer abroad programs). 28 C.F.R. § 382.117 (issued May 2008)

**Court Decisions and Pending Litigation**

 There are only a few of cases specifically in the higher education context related to animals on campus. There are many others in the broader context of **public accommodations and public services** that provide guidance. For cases involving service animals in public accommodations and public service programs generally, see *DISABILITIES AND THE LAW* § 5:5 notes 7-16 (Thomson West 2012) and cumulative editions (with Julia Irzyk). Although some cases were decided before the 2010 regulations and some do not make clear distinctions about whether housing, employment, or Title II/III places are involved, the following is from the treatise.

 Permitting service animals in places where animals are not ordinarily allowed is a reasonable accommodation that must be considered. Issues relevant to service animals include whether the animal is trained to perform a service,[[2]](#footnote-2)8 health and safety concerns,[[3]](#footnote-3)9 concerns about disruption,1[[4]](#footnote-4)0 questions about what documentation can be required for an animal in a public setting,1[[5]](#footnote-5)1 and other issues.1[[6]](#footnote-6)2

 For cases involving service and other animals in **housing**, see *DISABILITIES AND THE LAW*  § 7:8 note 26 (Thomson West 2012) and cumulative editions (with Julia Irzyk). Note that issues raised in the housing setting include disturbing other tenants, property damage, and whether the individual has a disability and whether the animal is documented as an accommodation to a disability. The following are some of the cases cited in that footnote (alphabetically organized). Note that there seems to be more recognition of requiring greater documentation than in Title II and Title III situations.

Ajit Bhogaita v. Altamonte Heights Condominium Assn., Inc., 46 Nat'l Disability Law Rep. ¶ 125, 2012 WL 6562766 (M.D. Fla. 2012), aff'd, 765 F.3d 1277 (11th Cir. 2014) (veteran with PTSD, chronic anxiety, and depression could pursue claim that modification of condo rule limiting pet size would affect his having an emotional support animal; prescribed by physician)

Anderson v. City of Blue Ash, Ohio, 50 Nat'l Disability Law Rep. ¶ 10, 2014 WL 3102326 (S.D. Ohio 2014) (miniature horse providing only comfort and reassurance did not qualify as ADA service animal; zoning ordinances related to odors and animal waste not required to be waived); (on appeal) Anderson v. City of Blue Ash, 798 F.3d 338, 51 Nat’l Disability L. Rep. ¶ 121 (6th Cir. 2015) (miniature horse qualifies as services animal; was individually trained to do work and perform task of beneficial exercise in girl’s backyard; reversing the lower court&rsquo;’s summary judgment on accommodation of city zoning policy, remanding on that issue, upholding summary judgment for city on intentional discrimination and disparate impact issues)

Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor, 892 F. Supp. 2d 1268 (D. Haw. 2012) (allowing case to proceed regarding emotional support animals in apartment complex that did not allow pets)

Chavez v. Aber, 51 Nat’l Disability L. Rep. ¶ 34 (W.D. Tex. 2015) (allowing case to move forward when tenant requested pit bull dog as emotional support animal; lease had no-pets policy; landlord sought to evict her, denied lease renewal)

Cowart v. City of Eau Claire, 571 F. Supp. 2d 1005 (W.D. Wis. 2008) (individual who claimed she needed more dogs than city allowed did not demonstrate that she was disabled under Title II of the ADA; granting summary judgment for city)

&s;DuBois v. Association of Apartment Owners of 2987 Kalakaua, 453 F.3d 1175 (9th Cir. 2006) (permissible to request additional medical information from condominium owner seeking exemption from no-pets rule; dog was permitted to live with owner temporarily)

Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc., 778 F. Supp. 2d 1028, 66 A.L.R. Fed. 2d 687 (D.N.D. 2011) (charging an animal fee without a clear explanation about when fees applied created triable issues about whether denial of fee waiver was pretext)

Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253 (D. Or. 1998) (waiver of no pets policy reasonable for deaf tenant); Meadowland Apartments v. Schumacher, 2012 SD 30, 813 N.W.2d 618 (S.D. 2012) (tenant in federally subsidized apartment did not provide the information sufficient to request for dog accommodation)

Intermountain Fair Housing Council v. CVE Falls Park, L.L.C., 43 Nat'l Disability Law Rep. ¶ 195, 2011 WL 2945824 (D. Idaho 2011) (imposing security deposit for service animal impermissible under FHA)

Janush v. Charities Housing Development Corp., 169 F. Supp. 2d 1133 (N.D. Cal. 2000) (tenant's alleged need for two birds and two cats to act as service animals supported claim that landlord's eviction of tenant for violation of no pets rule violated FHA)

In re Kenna Homes Co-op. Corp., 210 W. Va. 380, 557 S.E.2d 787 (2001) (cooperative housing project's regulation prohibiting animals except service animals provided such animals are properly trained, certified for the particular disability of the resident, and resident has certification of said disability from specializing doctor did not violate FHA as applied to residents seeking to keep dogs as a reasonable accommodation)

Kromenhoer v. Cowpet Bay West Condominium Assocation, 77 F. Supp. 3d 462 (D. V.I. 2014) (FHA case does not require preferential treatment for tenants with disabilities; tenant must request accommodation and can only bring FHA claim if request is denied; claim involved emotional support animal and waiver of no pets policy; providing notice of condition but would not allow it to be shared with Board that was to consider the animal request; notice of condition is not a request for accommodation)

Myers v. Condominiums of Edelweiss, Inc., 48 Nat'l Disability Law Rep. ¶ 15, 2013 WL 4597973 (N.D. Ill. 2013) (questions remain regarding whether condominium must waive no-pet policy for individual who had cat for emotional support)

Oregon Bureau of Labor and Industries ex rel. Mayorga v. Housing Authority of Douglas County, 50 Nat'l Disability Law Rep. ¶ 90, 2014 WL 5285609 (D. Or. 2014) (request for fence for a service dog had not made known the justification and it was not readily apparent; permissible to seek medical information to justify the request; resident had made previous requests for fencing for gardening; summary judgment for condo association; request for anxiety disorder emotional support animal was initially denied but letter granted; no basis for showing that delay was violation of FHA)

Sabal Palm Condominiums of Pine Island Ridge Ass'n, Inc. v. Fischer, 6 F. Supp. 3d 1272 (S.D. Fla. 2014) (resident's multiple sclerosis made it readily apparent that requested accommodation of service dog would alleviate difficulties; requests for additional medical records to justify request not appropriate)

Smith v. Powdrill, 48 Nat'l Disability Law Rep. ¶ 85, 2013 WL 5786586 (C.D. Cal. 2013) (granting summary judgment to tenant requesting companion animal to address symptoms of depression and anxiety and other disorders)

Timberlane Mobile Home Park v. Washington State Human Rights Com'n, 122 Wash. App. 896, 95 P.3d 1288 (Div. 2 2004) (mobile home resident with severe migraine headaches failed to show that her dog met state's definition of service animal)

Warren v. DelVista Towers Condominium, Inc., 59 F. Supp. 3d 1082 (S.D. Fla. 2014) (denying motion to discuss in case involving request to modify no pets policy; fact issues existed regarding direct threat of emotional support dog and applying county ordinance banning pit bull dogs)

Whittier Terrace Associates v. Hampshire, 26 Mass. App. Ct. 1020, 532 N.E.2d 712 (1989) (landlord of housing project subsidized by federal government could not evict a low-income tenant with a psychiatric disability for owning a cat in violation of project rules because she was emotionally dependent on the cat and allowing her to keep it was a reasonable accommodation)

There are very few cases involving animals as an accommodation in **employment**.

 The following are **judicial decisions** from **higher education**:

*United States v. University of Nebraska,* 2013 WL 2146049 (D. Neb. 2013) (student housing is subject to Fair Housing Act. (See settlement below)

*Velzen & Fair Housing Center v. Grand Valley State,* 902 F. Supp. 2d 1038, 2012 WL 4809930 (W.D. Mich. 2012) (student who had been prohibited from living with her guinea pig as a comfort animal to control stress had brought a case that was not moot although she had moved off campus)

*Alejandro v. Palm Beach State College,* 2011 WL 7400018 (S.D. Fla. 2011) (granting temporary injunction to allow student to bring psychiatric service dog to campus and class; dog trained to alert her to impending panic attack)

Case involving dog in K-12 setting presents unique issues different than higher education, but is of interest. <https://www.disabilityscoop.com/2015/10/30/supreme-service-dog-case/20915/>

 The following are **case settlements** from **higher education**

**Kent State University**

Kent State University [http://www.justice.gov/crt/file/777336/download](https://exchange.louisville.edu/owa/redir.aspx?SURL=0gC6_YnFzOTqn5rQCzFaI04bATZ7Lh6tZ2Q7RRKPA2TIq9sLyy3TCGgAdAB0AHAAcwA6AC8ALwB1AHIAbABkAGUAZgBlAG4AcwBlAC4AcAByAG8AbwBmAHAAbwBpAG4AdAAuAGMAbwBtAC8AdgAyAC8AdQByAGwAPwB1AD0AaAB0AHQAcAAtADMAQQBfAF8AdwB3AHcALgBqAHUAcwB0AGkAYwBlAC4AZwBvAHYAXwBjAHIAdABfAGYAaQBsAGUAXwA3ADcANwAzADMANgBfAGQAbwB3AG4AbABvAGEAZAAmAGQAPQBBAHcATQBGAC0AZwAmAGMAPQBTAGcATQByAHEAMgAzAGQAYgBqAGIARwBYADYAZQAwAFoAcwBTAEgAZwBFAFoAWAA2AEEANABJAEEAZgAxAFMATwAzAEEASgAyAGIATgByAEgAbABrACYAcgA9AE0AaABTAFoAMwA0AEIAUQBnAFYAeABQADUAQwBtAFMANABIAEQAMwBkAFIAZwBNAEUANQAyAE8AVABOAGMAcAB4AE0AZQBTAEIAcwBVADQATgA4AFEAJgBtAD0AcQAyAE8ANwBWAGMAUQB2ADYASwBNAG0AaABFAGgAQQByAEsAYwBlAC0AdwBtAEMAYwB6ADAAaAB1AGIASwBLAEYAdQAzAG4ASwA2AHQARQB3AHMAYwAmAHMAPQAwADUAUgBrAEYAUABpAFoAQwBCAEoARABvAE4AbgBjADgASQB2AE0AZgBnAGQAQgBoAFIAcQBVAG4ANABrAGoAeQB1AGgAaQBYAGcAdQB4AFcAMgBrACYAZQA9AA..&URL=https%3a%2f%2furldefense.proofpoint.com%2fv2%2furl%3fu%3dhttp-3A__www.justice.gov_crt_file_777336_download%26d%3dAwMF-g%26c%3dSgMrq23dbjbGX6e0ZsSHgEZX6A4IAf1SO3AJ2bNrHlk%26r%3dMhSZ34BQgVxP5CmS4HD3dRgME52OTNcpxMeSBsU4N8Q%26m%3dq2O7VcQv6KMmhEhArKce-wmCcz0hubKKFu3nK6tEwsc%26s%3d05RkFPiZCBJDoNnc8IvMfgdBhRqUn4kjyuhiXguxW2k%26e%3d) -- filed in 2014, the case addressed some of the issues regarding the applicability of the Fair Housing Act to campus housing, but recognized that some of the issues are not rully resolved.

The Department of Justice had alleged that Kent State’s policies did not permit students with psychological disabilities to have emotional support animals in university housing. The settlement is found at Case: 5:14-cv-01992-JRA Doc #: 53 Filed: 01/04/16  [http://www.justice.gov/opa/file/809811/download](https://exchange.louisville.edu/owa/redir.aspx?SURL=O8leT6rM9P3s_2I38j1KMHckVzOXGn5vrYY7LaFe_fWYiBacBT3TCGgAdAB0AHAAcwA6AC8ALwB1AHIAbABkAGUAZgBlAG4AcwBlAC4AcAByAG8AbwBmAHAAbwBpAG4AdAAuAGMAbwBtAC8AdgAyAC8AdQByAGwAPwB1AD0AaAB0AHQAcAAtADMAQQBfAF8AdwB3AHcALgBqAHUAcwB0AGkAYwBlAC4AZwBvAHYAXwBvAHAAYQBfAGYAaQBsAGUAXwA4ADAAOQA4ADEAMQBfAGQAbwB3AG4AbABvAGEAZAAmAGQAPQBBAHcATQBGAEEAZwAmAGMAPQBTAGcATQByAHEAMgAzAGQAYgBqAGIARwBYADYAZQAwAFoAcwBTAEgAZwBFAFoAWAA2AEEANABJAEEAZgAxAFMATwAzAEEASgAyAGIATgByAEgAbABrACYAcgA9AE0AaABTAFoAMwA0AEIAUQBnAFYAeABQADUAQwBtAFMANABIAEQAMwBkAFIAZwBNAEUANQAyAE8AVABOAGMAcAB4AE0AZQBTAEIAcwBVADQATgA4AFEAJgBtAD0AbQBYAHoAQgBkAEsAaABQADEAQQBpADEAUgBLAGMAOABvAEQATABBAGkAWQBkAHAAVQA0AE0ARwBMAHoAZABhAHEAWABpAFIAcgBkAGoAaQBWAGMAWQAmAHMAPQBLAHkASQBJAGYAWgBHAFYAZwBhAGwANQBpAHcAWABVAEEAUwB4AHcAUwBEAEwAaAB2ADAAeQBnADkAaAAwAGQAVgBrAEQAVgBwAHUAZAA5AFEAbABRACYAZQA9AA..&URL=https%3a%2f%2furldefense.proofpoint.com%2fv2%2furl%3fu%3dhttp-3A__www.justice.gov_opa_file_809811_download%26d%3dAwMFAg%26c%3dSgMrq23dbjbGX6e0ZsSHgEZX6A4IAf1SO3AJ2bNrHlk%26r%3dMhSZ34BQgVxP5CmS4HD3dRgME52OTNcpxMeSBsU4N8Q%26m%3dmXzBdKhP1Ai1RKc8oDLAiYdpU4MGLzdaqXiRrdjiVcY%26s%3dKyIIfZGVgal5iwXUASxwSDLhv0yg9h0dVkDVpud9QlQ%26e%3d) In the settlement, Kent State agreed to the following:

       To pay $100,000 to two former students who sought and were denied a reasonable accommodation to keep an emotional support dog in their university-operated apartment;

       To pay $30,000 to a fair housing organization that advocated on behalf of the students;

       To pay $15,000 to the United States

       To adopt a housing policy that will allow persons with psychological disabilities to keep animals with them in university housing when such animals provide necessary therapeutic benefits to such students.

**United States v. University of Nebraska at Kearney (see above)**

[http://www.justice.gov/opa/pr/justice-department-and-university-nebraska-kearney-settle-lawsuit-over-rights-students](https://exchange.louisville.edu/owa/redir.aspx?SURL=DG3ngmeSE9x0q6n6mbqQlRHSdwkKxH2GYFI8R23I0V7Iq9sLyy3TCGgAdAB0AHAAcwA6AC8ALwB1AHIAbABkAGUAZgBlAG4AcwBlAC4AcAByAG8AbwBmAHAAbwBpAG4AdAAuAGMAbwBtAC8AdgAyAC8AdQByAGwAPwB1AD0AaAB0AHQAcAAtADMAQQBfAF8AdwB3AHcALgBqAHUAcwB0AGkAYwBlAC4AZwBvAHYAXwBvAHAAYQBfAHAAcgBfAGoAdQBzAHQAaQBjAGUALQAyAEQAZABlAHAAYQByAHQAbQBlAG4AdAAtADIARABhAG4AZAAtADIARAB1AG4AaQB2AGUAcgBzAGkAdAB5AC0AMgBEAG4AZQBiAHIAYQBzAGsAYQAtADIARABrAGUAYQByAG4AZQB5AC0AMgBEAHMAZQB0AHQAbABlAC0AMgBEAGwAYQB3AHMAdQBpAHQALQAyAEQAbwB2AGUAcgAtADIARAByAGkAZwBoAHQAcwAtADIARABzAHQAdQBkAGUAbgB0AHMAJgBkAD0AQQB3AE0ARgAtAGcAJgBjAD0AUwBnAE0AcgBxADIAMwBkAGIAagBiAEcAWAA2AGUAMABaAHMAUwBIAGcARQBaAFgANgBBADQASQBBAGYAMQBTAE8AMwBBAEoAMgBiAE4AcgBIAGwAawAmAHIAPQBNAGgAUwBaADMANABCAFEAZwBWAHgAUAA1AEMAbQBTADQASABEADMAZABSAGcATQBFADUAMgBPAFQATgBjAHAAeABNAGUAUwBCAHMAVQA0AE4AOABRACYAbQA9AHEAMgBPADcAVgBjAFEAdgA2AEsATQBtAGgARQBoAEEAcgBLAGMAZQAtAHcAbQBDAGMAegAwAGgAdQBiAEsASwBGAHUAMwBuAEsANgB0AEUAdwBzAGMAJgBzAD0ANgBBAE8AVQA5AEcARAA2AE8AVgBPAEIAUwBZADAAdgBnAE4AdgBHAE4AMwB4AEsAaQBSAGgANABTAHoANABFADAAZABzAFMAdwA2ADYAQgBXAHYAawAmAGUAPQA.&URL=https%3a%2f%2furldefense.proofpoint.com%2fv2%2furl%3fu%3dhttp-3A__www.justice.gov_opa_pr_justice-2Ddepartment-2Dand-2Duniversity-2Dnebraska-2Dkearney-2Dsettle-2Dlawsuit-2Dover-2Drights-2Dstudents%26d%3dAwMF-g%26c%3dSgMrq23dbjbGX6e0ZsSHgEZX6A4IAf1SO3AJ2bNrHlk%26r%3dMhSZ34BQgVxP5CmS4HD3dRgME52OTNcpxMeSBsU4N8Q%26m%3dq2O7VcQv6KMmhEhArKce-wmCcz0hubKKFu3nK6tEwsc%26s%3d6AOU9GD6OVOBSY0vgNvGN3xKiRh4Sz4E0dsSw66BWvk%26e%3d)

Case involved university asking for details of student’s treatment, medications, doctor visit schedules. DOJ found that university required detailed information going beyond what was needed to review the accommodation request in a housing setting.

 The settlement provided the following:

* Payment of $140,000 to two students denied assistance animals in university apartments.
* Change in policies to allow emotional assistance animals in university housing for students with psychological disabilities where animals provide necessary therapeutic benefits.

**Other Guidance and “Best Practices”**

The Association of Higher Education and Disabilities (AHEAD) is an excellent source of guidance (the organization specifically notes that it does not give legal advice), and a 2013 article by Scott Lissner provides an excellent overview of the issues. The document was published before some of the cases were resolved and settled in higher education situations. <https://www.google.com/?gws_rd=ssl#q=ahead+animals+on+campus+policies>

The National Association of College & University Attorneys (NACUA) is also an important resource for guidance on issues such as this. Elizabeth Brody Guck & Josh Dermott, *Accommodating Service and Assistance Animals on Campus Making Heads of Tails of the ADA, FHA, and Section 504* NACUA NOTES, Vol. 9, No 8, April 14, 2011 (although written before the recent settlements, it provides some useful perspectives on proactive planning.<http://www.nacua.org/nacualert/docs/ServiceAnimals/ServiceAnimals.pdf>

An update to the piece was written by Josh Dermott on March 16, 2012 (NACUA NOTES, Vol. 10, no. 6

Job Accommodation Network Guidance on Service Animals in the Workplace <https://askjan.org/media/servanim.html> is a service of the Department of Labor. While it is not official regulatory guidance, it provides information to employers and others about accommodations in employment settings and has been in existence since the 1980s.

Judge David L. Bazelon Center for Mental Health Law (organization founded in 1972 with mission to advocate for individuals with mental disabilities)

Fair Housing Information Sheet #6, Right to Emotional Support Animals in “No Pet” Housing

<http://www.bazelon.org/LinkClick.aspx?fileticket=mHq8GV0FI4c%3D&tabid>

**Articles About Animals on Campus**

* C.W. Von Bergen, *Emotional Support Animals, Service Animals, and Pets on Campus,* Administrative Issues Journal (Spring 2015), Volume 5, No. 1: 15-34. DOI: 10.5929/2015.5.1.3. <http://files.eric.ed.gov/fulltext/EJ1062480.pdf> Provides an excellent overview and guidance about various animal settings on campus.
* Katherine R. Powers, *Dogs in Dorm: How The United States v. University of Nebraska at Kearney Illustrates a Coverage Gap Created by the Intersection of the Fair Housing Act and Disability Law,* 47 Creighton L. Rev. 363 (2014) Addresses the challenges of determining the applicability of the Fair Housing Act to campus housing and suggesting the need for better guidance on the overlap. <https://www.animallaw.info/article/dogs-dorms-how-united-states-v-university-nebraska-kearney-illustrates-coverage-gap-created>
* Mark Bauman, Denise L. Davidson, Michael C. Sachs & Tegan Kotarski, *Service, Comfort or Emotional Support? The Evolution of Disability Law and Campus Housing,* 40 J. Coll. & U. L. 150 (2013)
* Rebecca J. Hussal, *Canines on Campus: Companion Animals at Postsecondary Educational Institutions,* 77 Mo. L. Rev. 417 (2012)
* [http://www.nytimes.com/2015/10/05/us/four-legged-roommates-help-with-the-stresses-of-campus-life.html?emc=eta1&\_r=0](https://exchange.louisville.edu/owa/redir.aspx?SURL=LZpEdWIMZMCk-TtyKuEw2iAEIUbxi6Dvghl4vhgS02RnSdkLyy3TCGgAdAB0AHAAcwA6AC8ALwB1AHIAbABkAGUAZgBlAG4AcwBlAC4AcAByAG8AbwBmAHAAbwBpAG4AdAAuAGMAbwBtAC8AdgAyAC8AdQByAGwAPwB1AD0AaAB0AHQAcAAtADMAQQBfAF8AdwB3AHcALgBuAHkAdABpAG0AZQBzAC4AYwBvAG0AXwAyADAAMQA1AF8AMQAwAF8AMAA1AF8AdQBzAF8AZgBvAHUAcgAtADIARABsAGUAZwBnAGUAZAAtADIARAByAG8AbwBtAG0AYQB0AGUAcwAtADIARABoAGUAbABwAC0AMgBEAHcAaQB0AGgALQAyAEQAdABoAGUALQAyAEQAcwB0AHIAZQBzAHMAZQBzAC0AMgBEAG8AZgAtADIARABjAGEAbQBwAHUAcwAtADIARABsAGkAZgBlAC4AaAB0AG0AbAAtADMARgBlAG0AYwAtADMARABlAHQAYQAxAC0AMgA2AC0ANQBGAHIALQAzAEQAMAAmAGQAPQBBAHcATQBGAC0AZwAmAGMAPQBTAGcATQByAHEAMgAzAGQAYgBqAGIARwBYADYAZQAwAFoAcwBTAEgAZwBFAFoAWAA2AEEANABJAEEAZgAxAFMATwAzAEEASgAyAGIATgByAEgAbABrACYAcgA9AE0AaABTAFoAMwA0AEIAUQBnAFYAeABQADUAQwBtAFMANABIAEQAMwBkAFIAZwBNAEUANQAyAE8AVABOAGMAcAB4AE0AZQBTAEIAcwBVADQATgA4AFEAJgBtAD0AcQAyAE8ANwBWAGMAUQB2ADYASwBNAG0AaABFAGgAQQByAEsAYwBlAC0AdwBtAEMAYwB6ADAAaAB1AGIASwBLAEYAdQAzAG4ASwA2AHQARQB3AHMAYwAmAHMAPQBiAC0AcAA4AGwAagB4AFkANABQADkAWABYAC0AagBzAGsAaQB4AEIASQBOAGkAZABZAG8AeQBkAGoAWgBvAEMAWAA0AGEAaQAxAHUAVABpAC0AUABvACYAZQA9AA..&URL=https%3a%2f%2furldefense.proofpoint.com%2fv2%2furl%3fu%3dhttp-3A__www.nytimes.com_2015_10_05_us_four-2Dlegged-2Droommates-2Dhelp-2Dwith-2Dthe-2Dstresses-2Dof-2Dcampus-2Dlife.html-3Femc-3Deta1-26-5Fr-3D0%26d%3dAwMF-g%26c%3dSgMrq23dbjbGX6e0ZsSHgEZX6A4IAf1SO3AJ2bNrHlk%26r%3dMhSZ34BQgVxP5CmS4HD3dRgME52OTNcpxMeSBsU4N8Q%26m%3dq2O7VcQv6KMmhEhArKce-wmCcz0hubKKFu3nK6tEwsc%26s%3db-p8ljxY4P9XX-jskixBINidYoydjZoCX4ai1uTi-Po%26e%3d)

**Issues Needing Clarity and Attention**

 Application to housing

 Application to health care settings (medical school; university hospitals, etc.)

 Application to some employment settings

 Documentation requirements

 Training of those implementing policies

 Who is on the front lines – residence halls, sports and performance events, etc.

 What can be asked in different settings

 What about impact on others – allergies and animal phobias

 Can “registration” be required in housing settings?

**Some Guiding Principles**

 Animal must be under control

 Not required to provide personal assistance

 Animal must not disturb or harm others

 For most places – official documentation or indication on animal is not required

Documentation *might* be required for employment and housing (but types might vary)

 Health and safety considerations appropriate in health care settings

 Individualized but consistent

 Interactive

 Proactive

**Prediction About Future Attention to This Issue in College Settings**

 Increase in mental health issues will continue to make this a major issue

 Students will continue to push the limits to have pets on campus, making it challenging for students whose interests are genuine

 Unlikely to receive additional federal regulations in near future

These cases can get high profile media attention in addition to be costly in time and money

BIO SUMMARY

Laura Rothstein, Professor of Law and Distinguished University Scholar,University of Louisville, Louis D. Brandeis School of Law

 Laura Rothstein joined the Louis D. Brandeis School of Law at the University of Louisville as Professor of Law and Dean in 2000 (serving as dean until 2005). During her four decades in legal education, she has written extensively on disability discrimination, covering a broad range of issues, with an emphasis on disability discrimination in higher education and special education and served in a number of service capacities on disability rights as it affects legal education. She chaired the AALS Special Committee on Disability Issues (1989-1991) and was the founding co-chair of the AALS Section of Disability Law in 2007. She uses her scholarship as an “advocate through education” and hopes to influence policy and practice by increasing awareness and understanding of disability rights issues. Her work to promote diversity and raise awareness on issues of disability, gender, and race have been recognized in numerous awards. She received her B.A. in Political Science from the University of Kansas and her J.D. from Georgetown University Law Center.

1. Professor of Law and Distinguished University Scholar, Brandeis School of Law. For additional information, contact her at laura.rothstein@louisville.edu. [↑](#footnote-ref-1)
2. 8 Davis v. Ma, 848 F. Supp. 2d 1105, 75 A.L.R. Fed. 2d 665 (C.D. Cal. 2012), aff'd, 568 Fed. Appx. 488 (9th Cir. 2014) (customer's puppy not trained service animal; puppy not fully vaccinated and doctor note did not explain how puppy ameliorated back issues); Cordoves v. Miami-Dade County, 92 F. Supp. 3d 1221, 2015 WL 2258457 (S.D. Fla. 2015) (individual claiming ADA compliance expertise not qualified as expert in obligations regarding service animals in claim against shopping mall; individual had no expertise as animal trainer and did not know what was needed to train a service animal; fact issues remained about whether animal was a trained service animal); Pruett v. Arizona, 606 F. Supp. 2d 1065, 21 A.D. Cas. (BNA) 1520 (D. Ariz. 2009) (seeking modification of state wildlife holding license policy that plaintiff sought to allow her to possess a chimpanzee as a service animal; modifications sought were fundamental alterations and not reasonable; chimp had not been trained to assist with diabetes and had not been a service animal); Access Now, Inc. v. Town of Jasper, Tennessee, 268 F. Supp. 2d 973 (E.D. Tenn. 2003) (miniature horse was not a service animal for purposes of ADA; owner did not have disability and horse did not assist and perform tasks for owner's benefit to help her overcome or deal with any disability); Perino v. St. Vincent's Medical Center of Staten Island, 132 Misc. 2d 20, 502 N.Y.S.2d 921 (Sup 1986) (exclusion of a blind person's guide dog from the delivery and labor room of a hospital allowed under state law). [↑](#footnote-ref-2)
3. 9 &s;Johnson v. Gambrinus Company/Spoetzl Brewery, 116 F.3d 1052, 22 A.D.D. 669, 7 A.D. Cas. (BNA) 837 (5th Cir. 1997) (Title III violation when brewery refused to allow guide dog on tour; dog posed no significant contamination risk); Crowder v. Kitagawa, 81 F.3d 1480, 15 A.D.D. 1, 5 A.D. Cas. (BNA) 810 (9th Cir. 1996) (not modifying animal quarantine laws for individuals with visual impairments may violate ADA); O'Connor v. Scottsdale Healthcare Corp., 871 F. Supp. 2d 900 (D. Ariz. 2012), adhered to on reconsideration, 2012 WL 2106365 (D. Ariz. 2012), aff'd, 582 Fed. Appx. 695 (9th Cir. 2014) and aff'd, 582 Fed. Appx. 695 (9th Cir. 2014) (service animal at hospital); Sak v. City of Aurelia, Iowa, 832 F. Supp. 2d 1026 (N.D. Iowa 2011) (local laws prohibiting specific breeds are inconsistent with ADA guidance on service animals); Roe v. Providence Health System-Oregon, 655 F. Supp. 2d 1164 (D. Or. 2009) (legitimate assistance animals should be allowed when feasible, but not when they create a direct threat; frequent hospital patient brought dog to assist severe neurological illness; putrid odor annoyed other patients and raised concerns about spread of infection); Pool v. Riverside Health Services, Inc., 12 A.D.D. 143 (D. Kan. 1995) (emergency room's exclusion of guide dog not violation of Title III). [↑](#footnote-ref-3)
4. 10 Krist v. Kolombos Rest. Inc., 688 F.3d 89, 26 A.D. Cas. (BNA) 1325 (2d Cir. 2012) (pre-regulation facts; restaurant customer not excluded because of her service dog; adverse treatment related to dog's conduct); Lentini v. California Center for the Arts, Escondido, 370 F.3d 837, 15 A.D. Cas. (BNA) 1125 (9th Cir. 2004) (modification of concert hall's policies to allow patron to attend performances with service animal that may have made disruptive noises at past performances, if such behavior would have been acceptable if engaged in by humans, was necessary and reasonable accommodation); Gipson v. Popeye's Chicken & Biscuits, 942 F. Supp. 2d 1303 (N.D. Ga. 2013) (service dog at restaurant for individual with diabetes; police officer response to dispute was not discriminatory). [↑](#footnote-ref-4)
5. 11 Pona v. Cecil Whittaker's, Inc., 155 F.3d 1034, 8 A.D. Cas. (BNA) 968 (8th Cir. 1998) (franchiser and police officers were not liable to customer for asking her to leave a place of public accommodation because she had a service dog); Hurley v. Loma Linda University Medical Center, 48 Nat'l Disability Law Rep. ¶160, 2014 WL 580202 (C.D. Cal. 2014) (inquiry of hospital visitor about service dog were more than limited inquiries allowed; officer requested documentation two or three times); Sears v. Bradley County Government, 821 F. Supp. 2d 987 (E.D. Tenn. 2011) (service animal in courthouse) (no intentional discrimination when security officer sought clarification from court officers about permissibility of bringing service animal into court; training session had been implemented after the incident); Grill v. Costco Wholesale Corp., 312 F. Supp. 2d 1349 (W.D. Wash. 2004) (no ADA violation where private membership club's written policy regarding admittance of service animals into warehouse stores, which required that employees first look for visual identification that animal was service animal, and in absence of visual evidence, permitted employees to inquire what &ldquo;“task or function&rdquo;” animal performed without asking for specifics of individual's disability); Stan v. Wal-Mart Stores, Inc., 111 F. Supp. 2d 119, 10 A.D. Cas. (BNA) 1632 (N.D. N.Y. 2000) (where store challenged entry of person with a disability with service dog, full and equal opportunity to participate in place of public accommodation was denied). [↑](#footnote-ref-5)
6. 12 Sak v. City of Aurelia, Iowa, 832 F. Supp. 2d 1026 (N.D. Iowa 2011) (granting preliminary injunction against city's policy of prohibiting pit bull dogs as service animals as violation of ADA); Dilorenzo v. Costco Wholesale Corp., 515 F. Supp. 2d 1187 (W.D. Wash. 2007) (employees made permissible inquiries about qualifications of a dog accompanying a store patron); Grill v. Costco Wholesale Corp., 312 F. Supp. 2d 1349 (W.D. Wash. 2004) (business may inquire about task or function if visual evidence does not clearly indicate animal is a support animal); Dohmen v. Iowa Dept. for the Blind, 794 N.W.2d 295 (Iowa Ct. App. 2010) (no discrimination in case by blind student claiming denial of use of service animal in educational program violated ADA; essence of program was curriculum was based on nonvisual theory and no visual aids, no service dogs were allowed; alternative educational sites were offered); Satterwhite v. City of Auburn, 945 So. 2d 1076 (Ala. Crim. App. 2006) (no demonstration of disability requiring service animal; defendant's refusal to leave book and video store because of her dog resulted in finding of criminal trespass); Thompson v. Dover Downs, Inc., 887 A.2d 458 (Del. 2005) (upholding exclusion of puppy from casino where owner refused to answer questions about its training). [↑](#footnote-ref-6)