Animals as Accommodations – Power Point Content **© Laura Rothstein**

**Puppies, Ponies, Pigs & Parrots -- Policies, Practices & Procedures --Pubs, Pads, Planes &**

**Professions**

***Animals as Living Accommodations***

AALS Sections on Disability Law, Animal Law, and Law and Mental Disability

**Friday, January 6,  2017**

IMAGE – Serious looking dog

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Overview

Why is the issue of interest?

What is the current framework for various settings?

Focus on areas other than K-12 education

What are the key principles for implementation?

What policies need to be addressed?

What will a Trump presidency and a Republication Congress bring to this issue?

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Why Is This Of Interest

“Toto, I don’t think we’re in Kansas anymore?”

More requests for

 accommodations

 (or animals just “showing up”)

Difference in requirements

 under ADA, 504, and FHA

Uncertain and complex legal

 Standards

IMAGE – Dorothy singing “Over the Rainbow to Toto” in the Wizard of Oz

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Why is this of interest? Phobias and allergies.

IMAGE – girl sneezing with dog in background; man cowering away from snarling dog

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Why is this of Interest – Behavior can affect others

IMAGES – Very large dog taking up more than its share of seat space on plane; dog howling; dog cleaning up its droppings

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Why is this of Interest? \_-- Extreme cases

IMAGES – Large spider with service animal blanket; backpack parrot, woman with small kangaroo, turkey on a plane

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Why is this of Interest? Concerns about the slipper slope

IMAGES – dogs sliding down snowy hillsides

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Why is this of interest? Concerns about people wanting to take their pets to public places

IMAGE – picture of Elle Wood with Bruiser in Legally Blond

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Policy of Access – Balanced with Other Considerations

IMAGE – animals on a tightrope

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Why Law Matters, Sources of Legal Guidance

Statutes and regulations

Regulations

Agency guidance (including Frequently Asked Questions)

Judicial decisions

Case settlements

“Best” practices – need to relate to each type of institution and program

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Statutes

Americans with Disabilities Act

Section 504 Rehabilitation Act

Fair Housing Act

Air Carrier Access Act

All prohibit discrimination on basis of disability

All require reasonable accommodation (allowing animals)

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Regulations and Regulatory Guidance

REGULATIONS

Department of Justice 2010 Regulations

Department of Transportation Regulations

GUIDANCE

Department of Justice 2015 Guidance

Department of Housing & Urban Development

 Guidance

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Who Is Covered

Three part test:

Substantial limitation to one or more major life activities

Record of such an impairment

Regarded as such

2008 ADA Amendments provide for broad reading

-- more mental health (PTSD) or other health conditions covered (diabetes, epilepsy)

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Who is covered?
Individuals with sensory impairments
and those with mobility impairments

IMAGES – blind man walking with seeing eye dog; woman in a wheelchair with monkey opening a refrigerator for her

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Who is covered?
 Individuals with mental health
conditions
and those with other health
issues (diabetes, epilepsy, etc)

IMAGES – Author (Captain Luis Carlos Montalvan) of “Until Tuesday” with his service dog Tuesday providing support for PTSD; woman with a dog wearing a “Seizure Alert Dog” blanket

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Service animals –

Must be individually trained to work or perform a task

Task must directly relate to disability

Limited documentation may be requested

 Cannot require them to be “registered”

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Types of Animals in Title II and Title III Settings

Dogs and miniature horses only

IMAGES – woman at restaurant with miniature horse; dog assisting wheelchair user to get into building

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Emotional support, therapy, comfort, or companion animals NOT considered “service” animals under ADA

 Some state laws might allow in public places

 Might be allowed in employment, housing, on planes

IMAGE- woman with rabbit

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Types of Animals on Plane

IMAGES -- man with dog in plane seat; Daniel the Duck walking in airplane aisle

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Campus Settings Raise Complex Issues

Classrooms, libraries, food service

Events – performance and sports events

Housing

Fraternities and sororities

Employment – work study

Off campus trips

Programs abroad?

IMAGE – college student sleeping with miniature horse

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Campus Settings

Sports & performance events

Health care settings

IMAGES – man in hospital bed with dog; attendees at football game with a cat

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Accommodation: Documentation Issues

Different requirements in different settings

Limited inquiries under ADA – the two questions

*Is that a service animal for a disability?*

*What service does the animal perform?*

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Basic principles

Should not be unduly burdensome

Should be proportional to type of request

IMAGE – Advertisement for “Need an ESA: Free Five Minute Screening, Click Here,” with dog pictures

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Undue Burden, Fundamental Alteration, Danger to Others

Need not allow accommodations that are an undue burden or a fundamental alteration

Not required to clean up after animal or to assist in “relief” efforts

IMAGE – potbellied pig on lap of airplane passenger

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Conditions of others – Phobias and Allergies

Not clear if these rise to level of disabilities (individualized inquiry)

Cannot summarily exclude because of that

Requires interactive process and balancing

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So What Are the Clear Rules and What Should be Done about them

IMAGE – picture from “Pirates of the Carribean” movie saying “The Code is More Like Guidelines Than Actual Rules”

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Principles and Framework

Individualized

Interactive

Consistent

Proactive

IMAGES – Pit Bull dogs, one stating Toledo’s ordinance

“The City’s vicious dogs ordinance restricts residents to owning only one pit bull dog and requires that they keep the animal leashed and muzzled when it’s away from home.”

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What are the courts doing with these issues?

Increasing number of cases in a range of settings

Common themes

 Individualized and context based decisions

 Separating issues

 Is individual protected under statute

 Does requested accommodation require undue burden

 Institutions often conflate these issues

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What are the areas that need policy attention?

College campuses – variety of settings and constant presence

Housing – no specific guidance other than case law

K-12 education – pending Supreme Court decision – assistance with dogs and child’s inability to take care of some issues

Employment – no specific guidance other than case law

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Areas needing policy attention (continued)

Air travel – different rules for plane and airport

Mass transit

Uber ™

IMAGES – dog on Uber™ vehicle, couple boarding an Amtrack train with a dog in a backpack

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The Future—Public Behavior

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

Individuals wanting pets will continue to push the limits

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Trump and Disability Discrimination Issues

IMAGE from November 2015of Trump mocking reporter Serge Kavalski and his disability; picture of goldendoodle named “Patton”

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New Congressional Leadership and Congressional Control

IMAGES – Trump’s appointees to be Attorney General, Secretary of Education, and Secretary of HHS –

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Probable Future Federal Policy

No repeal of federal statutes

Not much change in official regulations

Reduced federal appropriations

Reduced federal enforcement

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State policies

Many are broader in terms of what animals are allowed (California) and who is considered to have a disability

Sixteen states have criminal penalties for fraud in seeking animal accommodations

IMAGE – police car (enforcer)

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Final Thoughts

States as Laboratories of Democracy

Louis D. Brandeis

IMAGE – Louis Brandeis on a horse