



Service & Emotional Support Animals

Increasing Complexities in Developing an Effective Policy and Process to
Withstand Legal and Public Relations Scrutiny



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OVERVIEW

- Understand disability and discrimination laws that frame the use of service and emotional support animals (ESA);
- Understand the differences between service animals and ESAs;
- Review best practices/suggestions for developing a solid service animal and ESA policy.





APPLICATION TO HIGHER EDUCATION



AMERICAN WITH DISABILITIES ACT OF 1990

Prohibits discrimination against individuals with physical and mental disabilities in all areas of public life, including jobs, schools, transportation, and access to all public and private places that are open to the general public.

Institutes of higher education must provide reasonable accommodations to qualified students, employees, and visitors.

Enforced by U.S. Civil Rights Division, Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC).



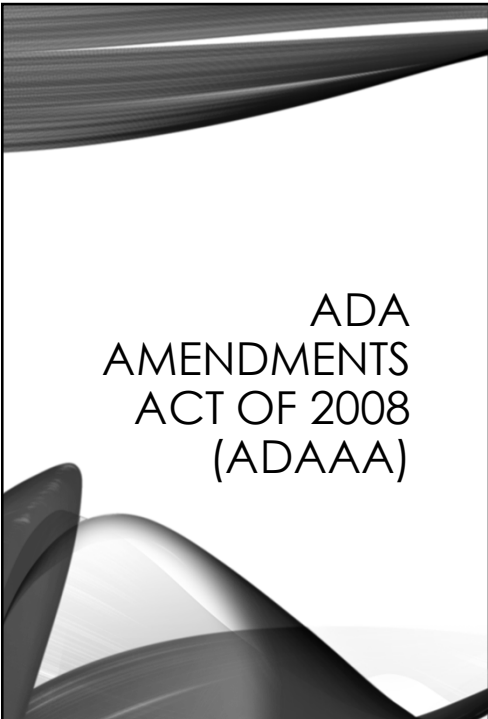
AMERICAN WITH DISABILITIES ACT OF 1990

Titles I, II, and III provide protection in employment within public services and public accommodation in private entities.

Applies to all colleges and universities which employ individuals with disabilities, have public venues (like performances open to the public) or provide services such as education to the public.

All of these ADA titles also include the protection of the use of service animals used by employees, students and visitors, and protect the use of ESA within a University residence hall setting.

Housing and Urban Development enforces Title II when applies to state or local public housing.



ADA AMENDMENTS ACT OF 2008 (ADAAA)

The ADAAA made significant changes to the definition of an individual with a disability.

Broadening the definition has resulted in more individuals qualifying with a disability and seeking reasonable accommodation.

For example, an impairment that is episodic or in remission is a disability if it affects a major life activity when it is active.



SEC 504 REHABILITATION ACT OF 1973

Prohibits discrimination against an otherwise qualified individual with a disability, solely on the basis of the disability, in any program or activity that receives federal financial assistance.

Section 504 was also amended under the ADAAA to include a broader definition of disability.

Enforced by Office for Civil Rights, U.S. Department of Education.



FAIR HOUSING ACT (TITLE VII OF THE CIVIL RIGHTS ACT OF 1968)

Prohibits discrimination in housing based upon race, sex, religion, color, national origin, familial status, and disability.

Prohibits refusal to make reasonable accommodations in rules, policies, etc., when such accommodations may be necessary to afford a person with disability the equal opportunity to use and dwell in the residence.

Jointly enforced by Department of Housing and Urban Development and Department of Justice.

WHAT IS A SERVICE ANIMAL?

SERVICE ANIMALS

- “Dog that is individually trained to do work or perform specific tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual, or other mental disability.”
- Miniature horse
 - Generally weighs between 70 to 100 pounds and is approximately 24 to 34 inches in height as measured to the shoulder of the horse.
 - Only recognized as a service animal under Title I of the ADA.



NEED FOR SERVICE ANIMALS

- Guide dog or seeing eye dog
- Hearing or signal dog
- Ssig Dog (sensory or social signals)
- Seizure response dog
- Psychiatric service dog



SERVICES PROVIDED

- Can be trained to assist individuals with psychiatric disabilities/mental disorders.
- Alleviating symptoms of PTSD, anxiety, and panic disorders by physically taking an action to calm the owner.
- Preventing or disrupting impulsive or destructive behaviors (self-mutilation) or interrupting inappropriate repetitive behavior with a persistent nudge.



QUESTIONS TO ASK:

When a person with a dog enters a public facility or place of public accommodation, the person cannot be asked about the nature or extent of his/her disability.

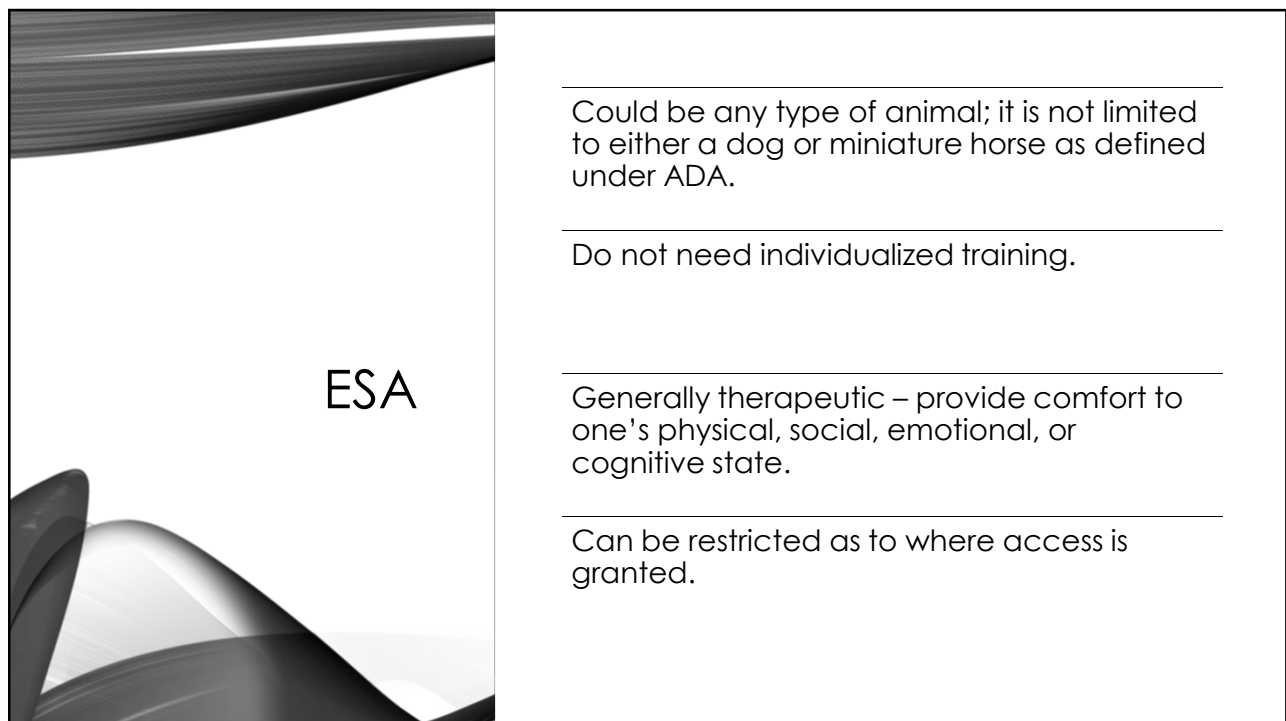
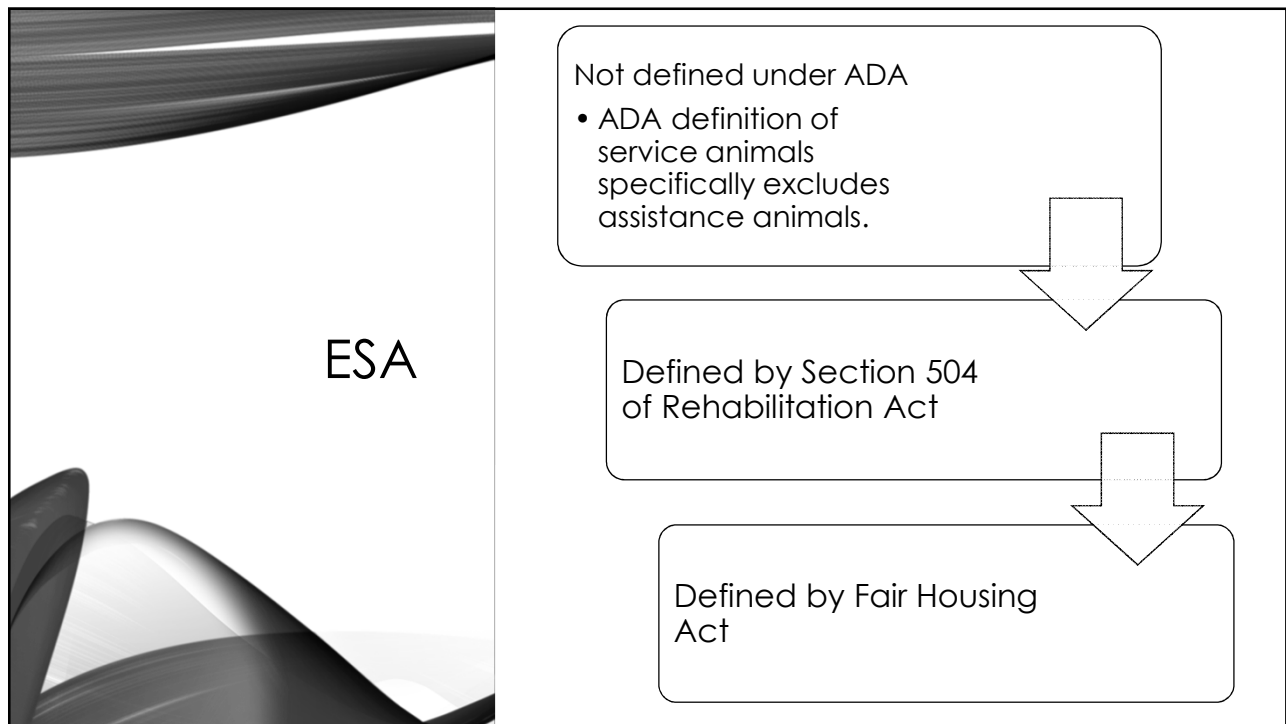
Only two questions may be asked:

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform?

Department of Justice, Civil Rights Division: FAQs about Service Animals and the ADA Available at https://www.ada.gov/regs2010/service_animal_qa.html

WHAT IS AN EMOTIONAL SUPPORT ANIMAL?







ESA SEC 504

ESA FAIR HOUSING ACT

May be a certified service animal, an emotional support animal, or any other 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 disabilities."

ESAs that do not qualify as service animals under the ADA may nevertheless qualify as reasonable accommodations under Sec. 504 and Fair Housing Act.



DEFINITIONS

PET

- “A ‘Pet’ is an animal kept for ordinary use and companionship. A Pet is not considered a Service or Emotional Support Animal. Pets are not covered by this policy. Student residents are not permitted to keep pets, other than fish, on college property or in on-campus housing.”

APPROVED ANIMAL/OWNER

- “An ‘Approved Animal’ is a Service Animal or Emotional Support Animal that has been granted as a reasonable accommodation under this policy.”
- “The ‘Owner’ is the student resident who has requested the accommodation and has received approval to bring the ‘Approved Animal’ on campus.”



POLICY REVIEW



CASE STUDY REGISTRATION

- “University requires that individuals with Service and Assistance Animals register with the Office of Disability Services. This process is used to identify the student and animal in case of emergencies; hall evacuation, harm to handler or animal, ensure community health, and inform facility and hall staff, and campus police. Registration includes student contact information, breed of dog, color, name of dog and the type of work the dog does.”

CASE STUDY REGISTRATION

- “During the registration process you will need to make an appointment with the Disability Office and provide a note from a qualified individual of the purpose and need of the emotional support animal. While not an exhaustive list, examples of qualified individuals include treating physicians, psychologists, psychiatrists and licensed counselors.”

CASE STUDY REGISTRATION - OVERVIEW

- Medical and/or psychological documentation is not required for service animals under the ADA
- Medical and/or psychological documentation is required for a ESA.



SUGGESTED LANGUAGE REGISTRATION – SERVICE ANIMAL

- “Service animals do not need to be registered with the Office of Accessible Education; however, you may be eligible for academic accommodations if you use a service animal. Students who use Service Animals are strongly encouraged to connect with the Office of Accessible Education by the established important dates to discuss housing accommodations that may need to be made.”

SUGGESTED LANGUAGE REGISTRATION - ESA

- “Be in the form of a letter or report from a physician, psychologist, psychiatrist or other medical provider who is qualified to make the diagnosis and is currently treating you for the disability for which you are requesting a ESA. This person cannot be a relative of the student.
- The documentation must be on official letterhead and should be signed and dated within the last two years. (consider within the last one year)
- Provide evidence the provider is currently treating you for the condition for which the accommodation is requested.”

SUGGESTED LANGUAGE REGISTRATION - ESA

- “Include a specific diagnosis, a statement of your current condition, the date and a summary of your most recent evaluation, and the expected duration of your condition.
- Explain how the condition relates to your request for a ESA. There must be a clear direct link established between the condition and your requested ESA.”



COURT CASE REGISTRATION - ESA

- US v. University of Nebraska at Kearney, 940 F. Supp.2d 974(2013).
- Court found that University had discriminated against a student by “requiring detailed disability information that goes beyond what is needed to review a request for a reasonable accommodation in housing.”



CASE STUDY ANIMAL-FREE HALLS?

- “The following residence halls are animal free: Jones, Miller, and Keith.”



SUGGESTED LANGUAGE ANIMAL-FREE HALLS?

- “Housing will need to inform a student’s roommate(s), floor, or suitemates of the presence of an ESA and to make necessary housing changes that may be required based on the presence of the ESA.”

SUGGESTED LANGUAGE ANIMAL-FREE HALLS?

- “All roommates or suitemates of the owner must sign an agreement allowing the Approved Animal to be in residence with them. In the event that one or more roommates or suitemates do not approve, either the owner and animal or the non-approving roommates or suitemates, as determined by Residence Life, may be moved to a different location.”

SUGGESTED LANGUAGE ANIMAL-FREE HALLS?

- “By my signature below, I acknowledge that I have received a copy of the Student Campus Housing Policy for Service and Emotional Support Animals at XX College. I understand that I will share the common areas of my assigned residential space with the animal approved by this agreement. Should I have any concerns regarding the care and control of the approved animal, I will discuss my concerns with the approved animal's owner and then with Student Disability Services at XX if the approved animal owner and I cannot come to an agreement.”



CASE STUDY WHERE PERMITTED?

- “ESAs are only allowed in residence halls.”



CASE STUDY WHERE PERMITTED?

- “Approved ESAs are allowed in residence halls, are restricted from access to all other campus areas, and can only leave the residence hall for nature breaks. ESAs are not allowed in classrooms, other campus buildings or other residence halls, or campus events. ESAs must be under the control of their owner at all times, cannot be left alone overnight, and cannot be cared for by another student.”

SUGGESTED LANGUAGE WHERE PERMITTED?

- “Emotional Support Animals must be contained within the privately assigned residential area (room, suite, apartment) at all times, except when transported outside the private residential area in an animal carrier or controlled by leash or harness.”

CASE STUDY VACCINATIONS AND HEALTH

- “In order for an ESA to be approved by the Disability Office, the owner/handler must provide the following documentation:
 - Evidence of required vaccinations
 - Evidence of licensing as required by state or local law.”

SUGGESTED LANGUAGE VACCINATIONS AND HEALTH

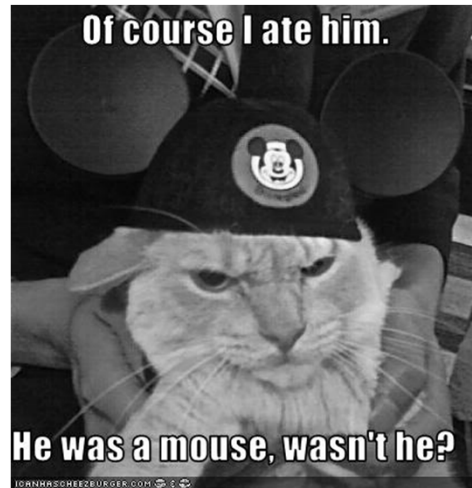
- “Evidence of current health and vaccination record of the animal in accordance with local, county or state ordinances.”
- “Remember the ESA's vaccinations have to be updated within a certain timeframe (as indicated by the Veterinarian) and it is the student's responsibility to submitted an updated ESA Veterinarian Verification Form within one week of the date of expiration.”

SUGGESTED LANGUAGE VACCINATIONS AND HEALTH

- “Health: Animals to be housed in campus housing must have an annual clean bill of health from a licensed veterinarian. Documentation can be a vaccination certificate for the animal or a veterinarian's statement regarding the animal's health. The college has authority to direct that the animal receive veterinary attention. (Local licensing law is followed.)”

CASE STUDY LIVE ANIMALS AS DINNER?

- "Live animals cannot be brought on campus to be fed to ESAs."



SUGGESTED LANGUAGE LIVE ANIMALS AS DINNER?

- "ESAs can be fed freeze dried or otherwise dead animals and still maintain their health. This requirement is for the health and safety of all residents in the residence hall where the ESA resides."

CASE STUDY DISRUPTIVE ANIMAL

- “The Owner is responsible for assuring that the Approved Animal does not unduly interfere with the routine activities of the residence hall community or cause difficulties for students who reside there.”

SUGGESTED LANGUAGE DISRUPTIVE ANIMAL

- “Housing is not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others. Thus, if the particular animal requested by the individual with a disability has a history of dangerous behavior, Housing does not have to accept the animal into the housing.”
- “The Owner is financially responsible for the actions of the Approved Animal including bodily injury or property damage. The Owner’s responsibility covers, but is not limited to, replacement of furniture, carpet, window, wall covering, and the like. The Owner is expected to cover these costs at the time of repair and/or move-out.”

SUGGESTED LANGUAGE DISRUPTIVE ANIMAL

- “If the ESA or Service animal is disruptive or poses a direct threat to the safety and health of others that cannot be reduced or eliminated by a reasonable accommodation, the ESA or Service Animal may be removed from the Dwelling. The student will be instructed not to bring the ESA/Service Animal into the Dwelling or the common areas of the Dwelling until and unless Housing has determined the problem is resolved. Housing, Disability Office, and the Office of Environmental Health and Safety shall engage in an interactive process with the Student to attempt to resolve the ESA/Service Animal's disruption or direct threat. If the ESA/Service Animal's disruption or direct threat is not resolved through reasonable efforts, Housing's decision to remove the ESA/Service Animal is final and such ESA/Service Animal will not be permitted to return to the Dwelling.”

SUGGESTED LANGUAGE DISRUPTIVE ANIMAL

- “The Owner is also responsible for ensuring the cleanup of the animal's waste and disposing it in the identified outside waste disposal containers. Owner, where appropriate, must toilet the animal in areas designated by the college consistent with the reasonable capacity of the Owner. Indoor animal waste, such as cat litter, must be placed in a sturdy plastic bag and securely tied up before being disposed of in outside identified waste disposal containers. Litter boxes should be placed on mats so that waste is not tracked onto carpeted surfaces.”

SUGGESTED LANGUAGE DISRUPTIVE BEHAVIOR

Include	Include references to the behavior and violations for misuse, abuse, and negative impact on community and as well as the expectations of animal handlers.
Include	Include guidelines when handler does not follow agreed upon management or treatment of the ESA.
Include	Include references to applicable sanctions under your Student Code of Conduct.

CASE STUDY HOME ALONE?

- "Animals must not be tethered to a stationary fixture or tree, or left unattended on campus. Service and support animals may not be left unattended within the confines of the owner's university residence."



SUGGESTED LANGUAGE HOME ALONE?

- “ESAs must be under the control of their owner at all times and cannot be left alone overnight on University property”.
- If the owner designates another student to care for their animal, the owner remains solely responsible for the animal's behavior.”



CASE STUDY SERVICE ANIMALS IN TRAINING

- Compliance issue – are dogs in training allowed on campus?
- What rules/policy can be imposed?
- What stimulations or behavior management can be employed on the part of the handler?
- What about the training organizations or businesses?
- How to manage all of these puppies??



SUGGESTED LANGUAGE SERVICE ANIMALS IN TRAINING

- “A University employee who wishes to bring a service animal in training onto campus while performing his or her duties must maintain compliance with Conflict of Interest, Conflict of Commitment, and Outside Activities in addition to those found in Section C.1 above.
- Animal must be registered with Disability Services office for evacuation and identification purposes.”
- “An individual with a service animal in training may enter University buildings with the animal provided:
 - The individual is an approved trainer who is an agent of organization recognized as reputable and competent to provide such training;
 - The individual submits proof to the ADA Coordinator that he/she is an approved trainer;
 - The trainer maintains control of the animal at all times.”

BEST PRACTICES

- **Training, training, and more training.**
 - The time to know the laws is BEFORE scenarios occur to prevent staff mistakes and potential lawsuits.
 - Training should be mandatory before the start of each fall semester for all Residence Hall Staff, Area Coordinator, Housing Administrators, Facility Hall Staff, and other relevant offices.
 - Don't forget that faculty need to know that they do not need to allow an ESA in their classroom.



BEST PRACTICES

Consistency. Utilize the same process and procedure with all individuals who request ESAs.

Clear responsibilities. Develop protocols that clearly define roles in the process. This would include the Housing Office Staff, Disabilities Office, Facilities, Conduct Officer, Campus Police, and the ADA Coordinator.



ACTION ITEMS

Review your ESA and Service Animal Policy

Must have:

- * Definitions
- * Language directed to:
- * Expected documentation
- * Behavioral expectations and consequences
 - * Where permitted
 - * Vaccinations
 - * Home alone
 - * What's for dinner?

REFERENCES

- U.S. Department of Housing and Urban Development: HUD FHEO-2013-01, Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded programs. April, 25, 2013. Available at https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf
- U.S. Department of Justice, Civil Rights Division: FAQs about Service Animals and the ADA. Available at https://www.ada.gov/regs2010/service_animal_qa.html
- U.S. Equal Employment Opportunity Commission: Final Report on Best Practices for the Employment of People with Disabilities in State Government. Part 1 C Interviews. October 31, 2005. Available at https://www.eeoc.gov/facts/final_states_best_practices_report.html
- 28 CFR 36, Americans with Disabilities Act, 1991, Title III. Available at <https://www.ada.gov/reg3a.html>
- 28 CFR 35, American with Disabilities Act, Title II. Available at https://www.ada.gov/ada_title_II.htm
- ADA Requirements: Service Animals. Available at https://www.ada.gov/service_animals_2010.htm
- 29 CFR 1630, ADA Amendments Act of 2008. Available at https://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm
- 42 U.S.C. 3601, Fair Housing Act. Available at <https://www.justice.gov/crt/fair-housing-act-2>

Questions or Comments?

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