Barking up the “Palm” Tree
Service Animals and Emotional Support Animals on Campus

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Introduction
Applicable Laws and Regulations
Definition of a Service Animal
Definition of an Emotional Support Animal (ESA)
What can you ask? Not ask?
What can you require? Not require?
Service animals in training
Scenarios

Agenda

Americans with Disabilities Act, as amended
Definition:
Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability the task performed by the dog must be directly related to the disability.
Definition of a task:

- The dog must be trained to take a specific action when needed to assist the person with a disability.
- For example:
  - A person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels.
  - A person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure.

What can you ask? Not ask?
Service Animals

- You cannot ask:
  - What is the disability?
  - For documentation of the disability
  - For a demonstration of the work or task
  - For evidence of training, license, certification, vest

Two questions you may ask:

If the need for a service animal is not obvious, you may ask two questions of the individual:

1. Do you have the animal because of a disability?
2. What task is it trained to do?
Service Animal

- A dog or miniature horse that has been individually trained to do work or perform tasks for an Individual with a Disability (IWD).
- Must take specific action when needed to assist the IWD.
- Does not have to be professionally trained. The IWD can train it.
- Can include psychiatric conditions, such as alerting the IWD of an imminent anxiety attack.
- Must be allowed in most facilities.
- Can have more than one per IWD, e.g., one for visual impairment and one for seizure disorder.
- Issue is access, not accommodation.

The ADA does not require that service animals be certified as service animals

- Covered entities may not require documentation such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry.
- Staff are not allowed to request documentation for the dog, require the dog demonstrate its task, or inquire about the nature of the person's disability.

Other important regulations!

- The ADA does not require service animals to wear a vest, ID tag, or specific harness identifying them as a Service Animal.
- People with disabilities have the right to train the dog themselves and are not required to use a professional dog training program.
Individuals who have service animals are not exempt from local animal control or public health requirements. Service animals are subject to local dog licensing and registration requirements.

Mandatory registration of service animals is not permissible under the ADA. Colleges and other entities such as local government may offer voluntary registries.

The ADA requires that the Service Animals be under the control of the handler at all times. The Service Animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal’s work or the person’s disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal.

A person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item of at a distance from her.

A returning veteran who has PTSD and has great difficulty entering unfamiliar spaces may have a dog that is trained to enter a space, check to see that no threats are there and come back to signal that it is safe to enter. The dog must be off leash to do its job, but may be leashed at other times.
What to do if a Service Animal is out of control:

- If a service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, you may request that the animal be removed from the premises.
- TAMUCC employees may ask students with Service Animals to leave a facility for being disruptive just as they would ask a student to do so for the same reasons.
- Students may return to the facility without the Service Animal.

Expectations for Service Animal Behavior

- Should:
  - Focus on handler and ignore distractions
  - Have a stable temperament
  - Stay at handler’s side
  - Remain still and quiet
  - Be well groomed
  - Respond to handler’s cues and commands
  - Perform disability-related task(s)

Service Animals Should Not:

- Urinate or defecate inside buildings
- Make unnecessary noises
- Show interest in food
- Sniff people or objects
- Pull on leash or wander away from handler
- Appear anxious or aggressive
- Engage in nuisance behavior
What about health care facilities?

- No evidence exists that animals pose a more significant risk of transmitting infection than people.
- A service animal should not be excluded unless a particular situation or an animal poses a greater risk than can be mitigated through reasonable measures.
- Where health care personnel, visitors, and patients can enter care areas without taking additional precautions to prevent transmission of infection, service animals must also be allowed access.

What about research facilities?

- Requires an individualized assessment of nature, duration, and severity of the risk and availability of modifications to minimize the risk
- Cannot establish a blanket prohibition of certain areas (e.g., labs, food service areas)

Reminder: the need for a Service Animal may not be visibly obvious!

- If the need is obvious, such as for a blind person needing it for guidance, then you may not ask any questions of the student or restrict activity.
- If they answer yes and give you a specific task, that is all the information that you can legally ask for IF they state it is in training, it may be removed.
- Service Animals in training are NOT service animals.
Texas Human Resources Code

- Prohibits discrimination on the basis of disability in public facilities.
- Requires reasonable accommodations in policies, practices and procedures or the provision of auxiliary aids and services necessary to use and enjoy public facilities.
- A person who uses a harness or leash commonly used by IWDs who use trained (service) animals in order to misrepresent an animal as a service animal is subject to a misdemeanor subject to a fine and community service.

Service Animal in Training

- Texas State Law does allow for Service Animals in training to access areas generally accessible to the general public AS LONG AS they are accompanied by an approved trainer.
- The statute does not define what an approved trainer is. Previous language indicated that it was “a person who is a member of professional organization generally recognized as training dogs to be their primary mission”.
- Language was removed from state website when DARS was merged into Workforce Commission.

Service Animals in Training

- Only dogs or miniature horses.
- Are not service animals; must be trained before taken into public areas (federal law).
- Can be under training by IWD or a third party.
- Some states do require public access.
Can be any type of animal
Is not a service animal
Frequently interchanged with ESA

Assistance Animals

These terms are used to describe animals that provided comfort just by being with a person.
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These animals are not considered Service Animals under the ADA (cont’d)

Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA. However, some State or local governments have laws that allow people to take emotional support animals into public places.

They are however, covered under the Fair Housing Act as a reasonable accommodation.

Additional Keys to State Laws

**Housing**
- It is an IWD’s right to full and equal access to housing accommodations. IWD’s are exempt from pet deposits and any policies against owning animals. An exception to this rule is made for single-family residences where only one room is rented, leased or furnished.

**Inquiries**
- It is an IWD’s right to not be asked about their service animal’s qualifications or certifications when attempting to enter a public place. Representatives of a public facility may ask about the basic type of assistance the service animal provides them.

Penalties for violating Service Animal Laws

**Discrimination**
- Denying entry or service to a person with a disability who uses a service animal is discrimination and a:
- Violation of civil liberties that warrants a cause of action for damages in court if there is a presumption of damages to the person
Fraudulent Use of Service Animal Laws

Representing an untrained animal as a trained service animal is a misdemeanor punishable by a fine of not more than $300 and 30 hours of community service.

Emotional Support/Comfort Animals (ESA)

- Can be any kind of animal
- Provide comfort just by being with an IWD
- Not trained to perform a specific job or task
- May alleviate one or more symptoms or effects of a disability
- Is an accommodation, so must have legitimate documentation from a reliable, qualified professional

Where can ESA’s be taken?

- ESA’s are restricted to the immediate living area of the student.
- May NOT be taken to the common living areas such as community bathrooms, kitchens and student areas.
- May NOT be taken into any other buildings on campus for any reasons.
**Student’s responsibilities for ESA’s**

- Students with both ESA’s and Service Animals are fully responsible for their maintenance including care, feeding and all required vaccinations.
- Students are fully responsible for cleaning up any areas where their animals relieve themselves on campus property.
- Students are also fully responsible for any damage caused by the ESA or Service Animals on campus.

**Where can ESAs go on campus?**

- Any “common area” inside or outside a residential facility. Cannot restrict it to the owner’s room and a specific designated outside “potty” area.
- Includes common kitchens, study rooms, laundry facilities, courtyards.
- Does NOT include classrooms, libraries, sport (although service animals can).

**Therapy Animals**

- Most commonly a dog, but can be other species
- Obedience trained and screened for ability to interact favorably with humans and other animals
- Primary purpose is to provide affection and comfort to people in stressful situations, such as in hospitals, nursing homes, schools, disaster areas, airports
- Typically are privately owned
- Not regulated by federal law
Housing

- Cannot exclude certain breeds or size of animals.
- Cannot require a pet deposit or pet fee.
- Cannot exclude animals because of the allergies or religious beliefs of others, including employees and other students, but may consider these issues in how access is provided.
- Cannot “steer” or segregate animals in particular residential facilities.

Housing Continued

- Entity is not responsible for care or supervision of the animal. If the individual cannot clean up after the animal, they are required to make arrangements for someone to do so.
- Do not require the animal to wear a vest or other identification.
- Do not disclose information about the presence of an animal except to those impacted (Residence Life, roommates, neighbors) without written consent.

What can you require?

- Entity can inspect for fleas, ticks, etc., and fumigate at owner’s expense if required beyond the standard treatment.
- Animals may not be left overnight in entity’s housing to be cared for by anyone other than owner.
- Entity personnel are not required to remove an animal during emergencies.
When can you exclude an animal? 

- When the animal is out of control and the handler does not take effective action to control it
- The animal is not housebroken
- It poses a direct threat to others or causes significant property damage
- Its presence results in fundamental alteration of an educational program
- Owner doesn’t comply with stated responsibilities
- Animal or its presence creates unmanageable disturbance or interference with university community
- The owner may return to the premises WITHOUT the animal

Questions?

Case Study #1

- A student is approved for an ESA, which happens to be a 70 lb. Siberian husky. Her documentation of need is reliable.
- She is spotted in the library with her dog. The dog is off its leash. This is reported to Residence Life.
- Residence Life tells her she has to confine the dog to the common areas in and around her dorm.
- She advises that the dog is now a service animal in training. She is training it herself.
- Your state requires public schools to allow service animals in training full access to public areas.
Case Study #2
- A new student at a Texas college submits a request for an ESA.
- The ESA is from a licensed therapist in California.
- The therapist’s website is selling ESA letters for $200 each.
- The student’s permanent residence is in Texas.
- The therapist’s letter states that she has assessed the student, diagnosed anxiety, and he needs the ESA.
- California law permits telemedicine.

Case Study #3
- Residential Life receives a call from a father whose son is thinking about attending in the fall.
- The son has a pit bull ESA.
- Asks what is the process for ESA approval? Are pit bulls allowed? Where on campus will he live?
- Only one dorm on campus has rooms with direct access to the outdoors. In the others, students have to go through 3 – 4 doors to go outside.
- Many students with animals choose that dorm.
- The call was “fake,” the caller was testing the school and tape recorded the call.

Helpful Resources
3. ADA Requirements, Service Animals, DOJ https://www.ada.gov/service_animals_2010.htm
5. HUD Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEC02013-01.PDF