



— 2018 UT SYSTEM —  
**LEGAL CONFERENCE**

*presented by the Office of General Counsel*

THE UNIVERSITY of TEXAS SYSTEM | FOURTEEN INSTITUTIONS, UNLIMITED POSSIBILITIES.

**A Dog Walks into a Bar ... WARNING: This is not a joke –  
everything you need to know about animals on campus**

*September 20, 2018, 1:45-2:45 p.m.*

# SPEAKERS

## **Ashley Palermo, J.D.**

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# WHAT ANIMALS ARE ON CAMPUS?

## Service Animals

Service animals in training

## Assistance Animals

Therapy Animals

Emotional Support Animals

Comfort Animals

# THAT'S NOT ALL!

## Pets & Other Animals

Lab animals

Mascots

Wild or feral animals

Law enforcement animals

Search and rescue dogs

Domestic animals for classes & events

Veterinary schools

Clinical Therapy Animals

# DISABILITY STATUTES

- Americans with Disabilities Act, ADA Amendments Act
- Section 504, Rehabilitation Act
- Fair Housing Act
- State laws and regulations
- Municipal codes, ordinances (apply to owner, not to public university)

# HOT TOPICS

1. Adequacy of documentation for assistance animals
2. Owners' claims that assistance animals are service animals
3. Presence of service animals in health care settings
4. Requests for multiple assistance animals
5. Therapy animals outside of clinical settings
6. State laws regarding prohibitions on private ownership of some animals
7. Requests for assistance animals in employment setting
8. Animal misconduct and continuation of accommodations

# ADA RULES ON SERVICE ANIMALS

**Who:** Individual with disability

**Where:** Everywhere handler is allowed (with exceptions)

**When:** Whenever area or facility is open to handler

**What:** Only trained dogs and miniature horses

**How** do we identify: Limited to 2 Questions

1. Is this a service animal?
2. What task(s) does it perform **to assist you with your disability?**

**Problem:** No state or federal license or registration for service animals

# SERVICE ANIMAL WORK

## Examples:

Guiding a visually impaired person

Alerting a hearing impaired person

Pulling a wheelchair

Assisting an individual during a seizure

Alerting an individual to the presence of allergens

Retrieving items or carrying items

Providing physical support and assistance with balance and stability

Preventing or interrupting impulsive or destructive behaviors

**NOT: emotional support, well-being, comfort, companionship, guarding**

# Service Animals ARE NOT the same as Assistance Animals

The laws are different, and so are the definitions and the requirements on the institution.

Don't confuse the two. If an animal is **only** providing “comfort, well-being, companionship,” then it is NOT a service animal.

Service animals do not require an accommodation request or documentation. Assistance animals do.

Service animals are **only** dogs and miniature horses. Assistance animals can be any type of animal.

Service animals must be allowed to go everywhere the owner goes. Assistance animals may be limited to certain locations.

Service animals must be trained to perform work or tasks. Assistance animals need not be trained, and need not perform work or tasks.

# Service Animals in Hospitals

## Two big Issues for Patients:

- 1. Generally, Service Animals must be allowed in patient rooms and anywhere else in the hospital the public and patients are allowed to go;**
- 2. If the patient is unable to care for the service animal, what happens?**
  - Best case scenario: patient makes arrangements for family or friends to provide care services for the animal**
  - If the patient cannot make those arrangements, hospital can board the animal**
  - The hospital must give the patient the opportunity to make arrangements first**

## Service Animals Behaving Badly



## Service Animals Must be “Under Control” of the Handler

- They do not need to be on a leash if the leash hinders their ability to do their job;
- They cannot bark repeatedly in a library, school, theater, or other quiet place (one bark is likely okay);
- Can be restricted from certain public places if it “fundamentally alters” the nature of a service offered to the public (example: zoos);
- What happens if a service animal is disruptive at your institution?
  - If a service animal is out of control and the handler does not take effective action to control it, staff may request that the animal be removed from the premises.



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# FHA RULES ON ASSISTANCE ANIMALS

**Who:** Individual with a disability

**Where:** Housing only

**When:** During residence on campus

**What:** Any type of animal

**How** do we identify:

No limitation on questions we may ask, but must not be abusive inquiries

Treat this just like any other request for an accommodation:

1. Require documentation
2. Engage in interactive process
3. Must be a reasonable accommodation



## EXAMPLES OF ASSISTANCE ANIMAL HELP

Animal's presence must have nexus with the owner's disability

For example:

- Alleviates the owner's depression or anxiety
- Reduces the owner's stress
- Distracts the owner from compulsive behavior
- Improves social interaction with others in residence hall



## Common Assistance Animal Conundrums (actual UT System matters)

- My assistance rat is a pack animal, so I need to bring the rest of its pack to make it feel better about being at college;
- I want to bring my ball python to campus as my assistance animal. I don't care if my roommate is scared of it;
- I want to bring my pit bull to campus, but the [insert city] has an ordinance against pit bulls;
- I just don't understand why my emotional support animal cannot be with me in the library. I NEED it to study;
- What do you mean you have a problem with my "doctor's letter?" I've never actually met the "doctor" (she lives in Oregon), but we text regularly about my mental health.

# COMPETING DISABILITIES

## **ALLERGIES:** (1 in 5 Americans suffer from allergies)

Allergies are covered by all disability laws if severe and limit major life activities

Animals are #4 on the top ten list of allergies

## **PHOBIAS:** (1 in 10 Americans suffer from phobias)

Phobias are covered by all disability laws if severe and limit major life activities

3 of the top 5 phobias are fear of snakes, spiders and dogs

## **INCOMPATIBLE ANIMALS:**

Natural enemies, personality conflicts, etc.

# SOLVING COMPETING DISABILITY ISSUES

**OBLIGATIONS:** Guidance says we **MUST** accommodate both individuals.

**QUESTIONS** to consider:

What are the individuals' specific needs?

What are strategies to help both parties?

# SERVICE ANIMALS AS WORKPLACE ACCOMMODATIONS

- Under Title I of the ADA, there is no definition of service animal and no guidelines for employers to follow when an employee asks to bring a service animal to work
- A request to bring a service animal to work is processed like any other request for a reasonable accommodation
- Consider the behavior of the animal and the needs of other employees
- Documentation: what can employers request?
  - Medical documentation regarding a disability
  - Documentation regarding the animal's training
  - Vet records or vaccination records

# TEXAS-SPECIFIC REGULATIONS

- Texas law specific to discrimination of individuals with service animals
- Texas law also addresses the misuse of service animals by falsely stating that the animal is trained.
- Texas law addresses the failure to care for service animals (and possible removal).
- Texas law (but not the ADA) covers service animals in training.

# POLICIES

Practical guidance:

- Recognize rights of individuals with disabilities
- Address all types animals on campus
- Decide on areas where assistance animals will be allowed, but have flexibility to consider requests for exceptions
- Set out procedures for making requests for assistance animals in housing
- Address state-specific statutes
- Have rules for obligations of owner

# QUESTIONS?

