


June 13, 2014

M E M O R A N D U M

To: Chief Student Affairs Officers
504/ADA Compliance Coordinators
Student Disability Services Coordinators
Directors of Public Safety
Human Resources Directors
Residence Hall Directors

From: Frederick P. Schaffer 

Re: Accommodation of Service Animals

Several federal, state and city laws govern CUNY's obligations to accommodate disabled persons using service animals in its facilities. In addition, residence halls are subject to more expansive obligations than other University facilities. This memorandum updates our previous memorandum on this topic and provides a description of the relevant laws and CUNY's obligations under those laws in order to ensure compliance in University facilities, including residence halls.

Overview of Laws

The first of the relevant federal laws is the Americans with Disabilities Act ("ADA"). Title II of the ADA applies to CUNY and requires accommodation of persons using a narrow range of service dogs. The second important federal law is the Rehabilitation Act of 1973, which incorporates essentially the same obligations as the ADA, although it is sometimes construed to apply more broadly in the housing context. The last applicable federal law is the Fair Housing Act ("FHA"). As far as CUNY is concerned, the FHA only applies to residence halls. The FHA requires accommodation of persons using a much broader range of assistance animals, including emotional support animals and untrained animals, and it is not limited to dogs.

With regard to state and local law, the New York State Civil Rights Law, New York State Human Rights Law, and New York City Human Rights Law also contain provisions regarding service animals. For purposes of this memo, the state and city laws impose essentially the same obligations as the ADA.

This memorandum outlines CUNY's obligations as to all University facilities and discusses the more specific requirements placed on residence halls.

All Facilities

Every CUNY facility must allow access to and equal use by a person using a trained service dog. In other words, the laws governing CUNY prohibit the University from denying access or use of a facility because of a person's reliance on a service dog. As applied to CUNY, "facility" means all college grounds and activities. This requirement applies equally to buildings, transportation services such as shuttle buses, and events such as commencement ceremonies. Similarly, the University may not impose additional rules that have the effect of limiting a disabled person's access to or participation in educational activities. Examples of prohibited rules include requiring an entry fee from those using service dogs, imposing an extra fee if the building has generally applicable entry fees, or requiring a disabled person to register his or her service dog or provide medical documentation of the need for the animal. Voluntary registration programs are legal, but a person may not be denied access for refusing to register his or her service dog.

These requirements imposed on all University facilities only relate to persons using trained service dogs. These are dogs trained to perform tasks for people with specific disabilities, including mental health disabilities. Examples include a guide dog for a blind person, a dog trained to interrupt inappropriate behavior by an autistic owner, or a dog that provides an environmental assessment when an owner with post-traumatic stress disorder shows signs of anxiety. University-wide obligations do not apply to dogs that solely provide emotional or psychological support, sometimes referred to as "therapy dogs." University-wide obligations also do not apply to any other kind of animal (there is an unusual exception for miniature horses, but it is unlikely to be an issue in New York City).

CUNY may not require documentation relating to a person's disability or a dog's training before allowing entry to one of its facilities. When a dog's function is not readily apparent, a university employee may ask if the dog is a service animal required due to a disability, and may also ask what task the dog is trained to perform. But for dogs whose use is obvious, such as a guide dog for a blind person, even asking those two questions is illegal. There are only two situations in which access or use may be denied to an otherwise qualified dog: when the owner cannot control the dog, and when the dog is not housebroken. A failure to stop a dog from constantly barking counts as being unable to control it, and would justify a denial of access or use.

Beyond allowing access, all university facilities must make "reasonable accommodations" for persons using service dogs. This is a vague phrase, but a "reasonable accommodation" generally means allowing a disabled person to bring a service dog throughout a building and removing obstacles that may prevent the dog from accompanying its owner and performing its duties. Once a dog has been allowed in a building, it must be allowed to go anywhere with its owner, and reasonable accommodations must be made to ensure that no obstacles prevent it from doing so.

An accommodation does not have to be made if doing so would impose an undue burden or economic hardship on the University or fundamentally alter the operations of the University. These exceptions are very limited, however, and are almost never found by courts. As such, almost any possible accommodation will be deemed reasonable. Whenever there is a question as to whether a particular accommodation is required, the best practice is to err on the side of providing it. If there is a question as to whether a particular accommodation is reasonable, please consult with the Office of the General Counsel.

Residence Halls

The federal FHA only applies to "dwellings," which includes CUNY residence halls. While the FHA covers only a small number of University buildings, it covers a much broader range of animals and types of assistance. In particular, the FHA covers all "assistance animals," which includes emotional

support and therapy animals. If (1) a person has a disability¹, (2) the animal is necessary to give the disabled person an equal opportunity to use the residence hall, and (3) there is an identifiable relationship between the disability and the assistance provided, then the person and the animal must be accommodated in the residence hall. Under the FHA, the assistance animal does not have to be a dog; under the law, any animal can meet the test. Finally, even untrained animals are covered by the FHA. This means that an untrained, but valid, emotional support animal that is not a dog may be allowed in a dorm room, but must be left there when the disabled owner leaves to go to class.

Residence halls must make reasonable accommodations by allowing assistance animals to reside in the residence hall with their owners. Unlike University facilities as a whole, though, residence halls may require documentation from someone who requests the use of an assistance animal in his or her dorm room when the person's disability or the animal's use is not obvious. Permissible documentation includes a letter from a doctor or a mental health professional. This inquiry may pertain to any part of the three-part test in the above paragraph, including but not limited to whether a student has a disability and what the relationship is between the disability and the use of the animal. A college should confer with its Student Disabilities Services Coordinator when doing this analysis. Furthermore, a college may not designate a particular residence hall or area for students with assistance animals.

It is important to remember, however, that even in residence halls, the University may not ask for documentation from persons requiring service dogs. A recommended approach is to respond to all requests for dogs in residence halls by asking if the dog is a service animal required due to a disability. If the answer is "yes," the inquiry must stop there, and the dog must be permitted. If the answer is "no," the inquiry may proceed to the three-part test discussed above.

There are only a few exceptions to the FHA's coverage of assistance animals and requirement of reasonable accommodation. A residence hall does not have to allow an animal that would pose a direct threat to the health and safety of others in the residence hall, such as a dog that bites people other than its owner. Similarly, animals that would cause substantial physical damage to the property of others in the residence hall need not be accommodated. Animals that would impose an undue financial or administrative burden on a residence hall or would fundamentally alter the nature of the residence hall's operations may be prohibited, but these exceptions very rarely apply.

Summary and Conclusion

In general, all CUNY facilities must provide reasonable accommodations for any person using a trained service dog that helps with a specific disability. Residence halls must make accommodations for all assistance animals and their disabled owners. If you have a question about an individual request for a service animal accommodation, please consult with either Kathy Raymond (Katherine.Raymond@cuny.edu or (646) 664-9207 or Hilary Klein (Hilary.Klein@cuny.edu or (646) 664-9216.

c: Legal Affairs Designees

¹ "Disability" is defined very broadly, and includes any impairment that substantially limits a major life activity. Examples include asthma, diabetes, speech disorders, and emotional illnesses; these examples highlight the extremely broad range of disabilities covered.