

PUPPIES, PONIES, PIGS, AND PARROTS:
 POLICIES, PRACTICES, AND PROCEDURES IN
 PUBS, PADS, PLANES, AND PROFESSIONS:
 WHERE WE LIVE, WORK, AND PLAY,
 AND HOW WE GET THERE:
 ANIMAL ACCOMMODATIONS IN PUBLIC PLACES,
 HOUSING, EMPLOYMENT, AND TRANSPORTATION

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This Article addresses how disability discrimination policy clarifies when animals might be allowed as accommodations in various settings. It provides the basic statutory and regulatory framework for these settings, additional administrative agency guidance, and some judicial interpretations of these requirements in various settings. Major settings where animals might be an accommodation are addressed separately, with particular focus on (1) higher education institutions because those settings have the potential of incorporating several different types of settings and (2) health care settings because of the particular concerns about health and safety.

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I. OVERVIEW

Although the United States is a pet loving country, American culture (unlike Europe where small dogs are seen in many public places) has historically not supported having these guests in most public places.¹ For many years, the exception was the traditional “seeing eye” dog—the German Shepherd or the Lab.² The desire to bring our four-legged and two-legged friends (and even no-legged snakes) to public places, however, has increased dramatically in recent years as the increase in stories about turkeys on planes, parrots in backpacks, and kangaroos at McDonald’s demonstrate.³ The increasing presence of ‘fake’ support animals is noted as well.

The Americans with Disabilities Act (ADA) addressed the growing presence of dogs and other animals in public places through its regulations promulgated in 2009.⁴ The ADA, passed in 1990, prohibits places of public accommodation and public service programs from discriminating on the basis of disability.⁵ It also requires these programs to

¹ Peter Moore, *Americans Love Dogs, but Don't Want Them in Their Restaurants*, YOUgov (Feb. 3, 2016, 7:09 AM), <https://today.yougov.com/news/2016/02/03/americans-dont-want-dogs-restaurants/> [<https://perma.cc/3YU4-ADWG>] (accessed Jan. 19, 2018).

² *6 Different Types of Service Animals*, DISABILITY GUIDE, <https://disabilityguide.com/6-different-types-of-service-animals.html> [<https://perma.cc/3DZ9-482S>] (accessed Jan. 19, 2018).

³ Grace E. Cutler, *Flying Turkey Ruffles Feathers About 'Emotional Support' Animals on Planes*, FOX NEWS (Jan. 15, 2016), <http://www.foxnews.com/travel/2016/01/14/turkey-ruffles-feathers-about-emotional-support-animals-on-flights.html> [<https://perma.cc/92LL-EUNL>] (accessed Jan. 19, 2018); Rebecca Skloot, *Creature Comforts*, N.Y. TIMES (Dec. 31, 2008), <http://www.nytimes.com/2009/01/04/magazine/04Creatures-t.html> [<https://perma.cc/8AR9-HMWY>] (accessed Jan. 19, 2018); Debbi Baker, *McDonald's Not Lovin' it When Woman Shows Up with Her Therapy Kangaroo Named Jimmy*, SAN DIEGO UNION TRIB. (Feb. 4, 2015, 2:25 PM), <http://www.sandiegouniontribune.com/opinion/the-conversation/sdut-therapy-kangaroo-wisconsin-mcdonalds-2015feb04-html-story.html> [<https://perma.cc/3R7Z-ANXP>] (accessed Jan. 19, 2018); Kathryn Daniel, *Fake Service Animals Are Becoming More Common*, WEAR (May 8, 2017), http://weartv.com/news/local/051017_10pm_dis-service-dogs [<https://perma.cc/9GDB-8L6Z>] (accessed Jan. 19, 2018).

⁴ Americans with Disabilities Act, 42 U.S.C. §§ 12101–12134 (2012); see also *Frequently Asked Questions About Service Animals and the ADA*, DEP’T. JUST. (July 20, 2015), https://www.ada.gov/regs2010/service_animal_qa.html [<https://perma.cc/UJL4-5TLL>] (accessed Jan. 19, 2018) (answering questions about the ADA and its implications for service animals).

⁵ 42 U.S.C. §§ 12132, 12182. See generally LAURA ROTHSTEIN & JULIA IRZYK, *DISABILITIES AND THE LAW* 2–93 (4th ed. 2017) (discussing the legal treatment of disabilities).

provide reasonable accommodations,⁶ which can take the form of waiving prohibitions on animals by the operators of these public places and making other accommodations to policies related to animals. Title I of the ADA applies to employment settings,⁷ which might also allow an individual to request the presence of an animal in the workplace. While not as comprehensive as the ADA, the Fair Housing Act (FHA) and the Air Carrier Access Act (ACAA) incorporate the possibility that animals might be required in housing settings and in air travel as reasonable accommodations.⁸

Although the 2010 federal regulations provide some clarification about what is legally required with respect to service and emotional support animals, there are still a number of uncertainties about what is required in any setting.⁹ Many programs have implemented policies and practices, and some of these have been at issue when courts have applied the statutory and regulatory requirements to these policies and practices.¹⁰

This Article addresses how disability discrimination policy clarifies when animals might be allowed as accommodations in various settings. It sets out the basic statutory and regulatory framework for these settings, additional administrative agency guidance, and some judicial interpretations of these requirements in various settings.¹¹ Major settings where animals might be an accommodation are addressed separately, with particular focus on higher education institutions (because those settings have the potential of incorporating several different types of settings) and health care settings (because of the particular concerns about health and safety).

For each situation, the following is addressed: what individuals are considered to be protected as meeting the definition of “disabled,” the reasonable accommodations required with respect to animals for these individuals, what documentation of the disability and the need for the accommodation is required, and what kinds of animals are to be allowed. Finally, this Article highlights principles common to all

⁶ 42 U.S.C. §§ 12131, 12182(b)(2)(A)(ii); *see* 42 U.S.C. § 12112(b)(5) (stating that employment also requires reasonable accommodation).

⁷ 42 U.S.C. §§ 12111–12117.

⁸ Fair Housing Act, 42 U.S.C. §§ 3601–3610 (2012); Air Carrier Access Act, 49 U.S.C. § 41705 (2012).

⁹ *See* Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56164, 56192–95 (Sept. 15, 2010) (commenting on and analyzing animal accommodations).

¹⁰ *See, e.g.*, *Grill v. Costco Wholesale Corp.*, 312 F. Supp. 2d 1349, 1353 (W.D. Wash. 2004) (holding that there was no ADA violation where private membership club’s written policy regarding admittance of service animals into warehouse stores, which required that employees first look for visual identification that animal was service animal, and in absence of visual evidence, permitted employees to inquire what “task or function” animal performed without asking for specifics of individual’s disability).

¹¹ *See Laura Rothstein*, SSRN, https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=379015 [<https://perma.cc/MG33-RP7X>] (accessed May 3, 2018) (providing an expanded version of this Article on the author’s SSRN page, which includes footnotes to approximately eighty judicial decisions in various settings) (forthcoming May 2018).

animal participation in various settings and provides a suggestion of the areas that are likely to emerge and those that would benefit from further clarification. The focus for each situation is primarily on federal law.

As these requirements are discussed, it is essential to clarify the distinction between ‘service animals’ and ‘emotional support animals’ (ESAs) and the settings in which statutory coverage allows different categories and types of animals. Some institutional policies provide additional categories of animals and are broader than federal law.¹² This can add even greater complexity to an issue that is already challenging and confusing.

Service animals are those that are individually trained to provide a specific service for an individual with a disability.¹³ ESAs are sometimes referred to as companion animals, comfort animals, therapeutic animals, or psychiatric animals.¹⁴ ESAs do not necessarily perform a specific task or service, but relieve stress or provide comfort for individuals with mental health challenges.¹⁵ Both ESAs and service animals are to be distinguished from pets, although one of the challenges of disability discrimination law is the increase in the number of individuals who simply want to bring their pets to various places and have begun using disability discrimination law to be allowed to do so.¹⁶ When these individuals push the limits, it makes it more difficult for those whose disabilities legitimately would benefit from the presence of a service animal or an ESA.

One of the reasons that animals are unique as reasonable accommodations is that this accommodation can directly affect others who may have fears or phobias, asthma, or allergies. Animals take up space, and in some situations, that can affect the space that others have and can expect to have.¹⁷ Animals also can disrupt or present a

¹² See *infra* notes 86, 90, 130 (addressing these additional categories provided in various institutional policies).

¹³ Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. § 35.104 (2016); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 28 C.F.R. §§ 36.104, 36.202(c) (2016). See generally 28 C.F.R. § 35.136 (2016) (specifying that the only animals allowed as “service animals” are dogs and miniature horses).

¹⁴ Federal law does not specify what animals might be allowed as ESAs in various settings, but animals frequently sought in housing for emotional support and for service include dogs, cats, rabbits, gerbils, potbellied pigs, birds, ferrets, sugar gliders (a popular college student companion), and even snakes. Frank W. Young, *Service and Emotional Support Animals as Reasonable Accommodations Under the Fair Housing Act*, 2 J. MARSHALL L. SCH. FAIR & AFFORDABLE HOUSING COMMENT. 5, 13–14 (2006).

¹⁵ Kimberly Alt, *Service Dog vs Therapy Dog vs Emotional Support Dogs*, CANINE J. (updated July 10, 2017), <https://www.caninejournal.com/service-dog-vs-therapy-dog-vs-emotional-support-dogs/> [<https://perma.cc/G8L7-P27V>] (accessed Jan. 19, 2018).

¹⁶ See *supra* note 3 (listing examples of people bringing pets and ESAs to various places).

¹⁷ See, e.g., *Blind Woman Claims She Was Kicked off American Airlines Flight with Service Dog*, FOX NEWS (Mar. 14, 2017) <http://www.foxnews.com/travel/2017/03/14/blind-woman-kicked-off-plane-with-her-service-dog-told-was-danger-to-flight.html>

danger or health concern that would affect others.¹⁸ Animals leave dander, hair, and waste behind. As a general rule, no other reasonable accommodation requires other individuals in various settings, not just the programmatic setting itself, to accommodate another person's disability in this manner.

II. BASIC STATUTORY FRAMEWORK¹⁹

Within all frameworks, the following are generally consistent expectations²⁰: the animal must be under the control of the individual;²¹ allowing an animal does not require the program to provide personal assistance;²² and the animal must not disturb, harm, or create a risk to others.²³ Additional charges in advance may not be required, although an owner could be charged for damage to the premises that actually occurred.²⁴ The requirements for documentation of the disability and the relationship of the disability to the animal accommodation, however, vary depending on the settings, as further described below. The type of animals allowed also varies depending on the setting.

A. *Americans with Disabilities Act and Rehabilitation Act*

1. *Statutory Overview*

Section 504 of the Rehabilitation Act of 1973 (Section 504) applies to programs that receive federal financial assistance.²⁵ The ADA, enacted in 1990, is much more comprehensive and has three major titles that would apply to situations involving animals as accommodations.²⁶ Title I applies to employment.²⁷ Title II applies to state and local gov-

[<https://perma.cc/K7YL-55EU>] (accessed Jan. 19, 2018) (reporting that a blind woman was kicked off of a flight because there was no room for her service dog).

¹⁸ *Could Therapy Animal Visitation Pose Health Risks at Patient Facilities?*, SCI. DAILY (June 19, 2017), <https://www.sciencedaily.com/releases/2017/06/170619092208.htm> [<https://perma.cc/X553-L5NU>] (accessed Jan. 19, 2018); see, e.g., *Support Dog Bites Passenger on Delta Plane in Atlanta*, ABC 7 (June 6, 2017), <http://abc7chicago.com/travel/support-dog-bites-passenger-on-delta-plane/2068960/> [<https://perma.cc/J7X8-Y34M>] (accessed Jan. 19, 2018) (reporting that a service dog bit a passenger on a flight).

¹⁹ The Individuals with Disabilities in Education Act is discussed in a separate article. See generally Rebecca Huss, *Canines in the Classroom: Issues Relating to Service Animals After Fry v. Napoleon Community Schools*, 24 ANIMAL L. 53 (discussing the issues that may arise when a disabled student wishes to be accompanied by their service animal in school).

²⁰ Although the citations are to regulations for Titles II and III of the ADA, it is probable that similar expectations would apply in other settings.

²¹ 28 C.F.R. §§ 35.136(d), 36.302(c)(4) (2016).

²² 28 C.F.R. §§ 35.136(e), 36.302(c)(5).

²³ 28 C.F.R. §§ 35.136(b), 36.302(c)(2).

²⁴ 28 C.F.R. §§ 35.136(h), 36.302(c)(8).

²⁵ Rehabilitation Act of 1973, 29 U.S.C. § 794 (2012).

²⁶ 42 U.S.C. §§ 12111–12189.

²⁷ 42 U.S.C. §§ 12111–12117.

ernmental programs.²⁸ Title III applies to twelve categories of privately-provided accommodations made available to the public.²⁹ The ADA and the Rehabilitation Act are generally intended to be interpreted consistently, and their basic application is generally the same.³⁰ For that reason, both statutes are covered in this Section.

Both the Rehabilitation Act and ADA prohibit discrimination on the basis of disability and require reasonable accommodations.³¹ The term reasonable accommodations can include providing auxiliary aids and services (such as interpreters) and modifying a program's policies, practices, and procedures.³² The regulations pursuant to these statutes establish that the program itself would not *provide* service animals as an auxiliary aid or service.³³ Neither do they generally contemplate providing assistance for addressing the needs of these animals—such as taking a dog outside to be walked or providing food or water.³⁴ Instead, animals in disability discrimination law would be an issue in the context of modifying policies. Making an exception to a policy that generally prohibits animals would be such a modification.

Reasonable accommodations are those that do not lower standards or place an “undue burden” on the program.³⁵ In addition, animals whose conduct (such as relieving themselves, biting, or barking) interferes with others can generally be prohibited.³⁶ Undue burden includes both financial and administrative burdens.

To be protected under these statutes, an individual must meet the definition of “being disabled” and be otherwise qualified to carry out the essential requirements of the program, with or without reasonable accommodation.³⁷ It also requires that the individual not pose a direct threat to others.³⁸ In the context of animals as accommodations, this would also mean that the animal not be a direct threat.

²⁸ 42 U.S.C. §§ 12131–12165.

²⁹ 42 U.S.C. §§ 12181–12189. Section 12181(7) specifically lists categories of private entities considered “public accommodations” in the subchapter.

³⁰ 42 U.S.C. §§ 12102(4)(B), 12201(a).

³¹ 42 U.S.C. § 12112(b)(5)(A); 34 C.F.R. § 104.44 (2016).

³² 28 C.F.R. § 36.302.

³³ 28 C.F.R. § 35.135 (2016).

³⁴ 28 C.F.R. §§ 35.136(e), 35.136(h), 36.302(c).

³⁵ 42 U.S.C. §§ 12112(b)(5)(A), 12182(b)(2)(A); *see, e.g.*, *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 412–13 (1979) (addressing what it means to be “otherwise qualified” under the Rehabilitation Act by incorporating the expectation that reasonable accommodations would be taken into account).

³⁶ *See, e.g.*, 28 C.F.R. § 36.302(c) (describing the service animal conduct exception); *Hurley v. Loma Linda Univ. Med. Ctr.*, No. CV12–5688 DSF (OPx), 2014 WL 580202, at *8–9 (C.D. Cal. 2014) (finding that an individual with a disability was asked to leave a hospital due to her inappropriate behavior and not her service animal); *Dohmen v. Iowa Dept. for the Blind*, 794 N.W.2d 295, 316 (Iowa Ct. App. 2010) (providing a jury instruction that “‘reasonable accommodation’ . . . does not require changes that would fundamentally alter the nature of the service provided”).

³⁷ *Davis*, 442 U.S. at 406–07.

³⁸ 28 C.F.R. §§ 35.104, 35.139, 36.301(b) (2016).

2. Regulations and Regulatory Guidance

Section 504 of the Rehabilitation Act is the underlying disability discrimination statute used as the model for other major federal statutes. The Section 504 model regulations promulgated in 1978 and the judicial decisions interpreting the statute and regulations provide a framework for ADA interpretations.³⁹ The regulation most relevant to situations where animals might be accommodations relates to modification of practices. There is nothing in any federal regulations that would require an animal be provided as an accommodation.⁴⁰ Instead, regulations suggesting policy modifications would apply. Many programs covered by federal nondiscrimination laws have policies prohibiting animals on the premises.⁴¹ The accommodation would be to allow a variance or exemption to such a policy.

The ADA was enacted in 1990 and amended in 2008, and both the original statute and the amendments are substantially more detailed than the Rehabilitation Act.⁴² Of most significance to animal accommodations are the 2010 ADA regulations promulgated by the Department of Justice (DOJ).⁴³ These provide a great deal of guidance on what is required and what is not, but they still leave open some unsettled questions. Some of these have been addressed through general agency guidance.⁴⁴

The 2010 DOJ regulations only require inclusion of dogs (and miniature horses) and permit entities to request or require only minimal documentation.⁴⁵ The following two questions can be asked: Is the dog a service animal required for a disability?⁴⁶ What work or task has the dog been trained to perform (and perhaps only if it is not apparent)?⁴⁷

A covered entity cannot ask for official “documentation” that the animal is a trained service animal nor require that the dog wear a

³⁹ Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services, 45 C.F.R. § 85 (2016).

⁴⁰ See, e.g., 28 C.F.R. § 35.135 (stating the general provision that entities are not required to provide personal devices and services).

⁴¹ See *infra* note 80 (discussing cases involving service animals and public accommodations).

⁴² 42 U.S.C. §§ 12111–12189; ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2012).

⁴³ See, e.g., 28 C.F.R. § 35.136 (addressing service animals and their treatment by public entities).

⁴⁴ In July 2015, the DOJ released an 8-page guide about service animals. See generally CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA (2015) (answering common issues regarding the treatment of service animals under the ADA).

⁴⁵ 28 C.F.R. §§ 35.104 (defining service animal); 35.136(f); 36.302(c)(6) (indicating which inquiries can be made).

⁴⁶ 28 C.F.R. §§ 35.136(f), 36.302(c)(6). It is impermissible to ask what the disability is. *Id.* § 35.136(f).

⁴⁷ *Id.* Even that inquiry may be impermissible where it is apparent what service is performed, such as a guide dog for an individual who is blind. *Id.*

special coat or blanket.⁴⁸ Other requirements include that the animal must be under control.⁴⁹ Entities allowing service animals are not required to perform assistance to the animal.⁵⁰

B. Fair Housing Act

The FHA prohibits discrimination and requires reasonable accommodation in the sale or rental of most housing.⁵¹ Generally, this prohibition does not apply to hotels and motels, except those that have long-term residences.⁵² The application of the FHA to housing at colleges and universities has not been fully resolved,⁵³ but it is likely that it would apply to these settings as well. This issue is discussed more fully below.⁵⁴

It is not unusual for rental agreements and ownership arrangements, such as those for condominiums, homeowners' associations, and cooperative housing settings, to have restrictions or prohibitions related to animals.⁵⁵ Some restrictions prohibit animals entirely, reference the types of animals allowed, restrict the number of animals, or limit the size of animals.⁵⁶ The refusal to *consider* an exception to such rules would violate the reasonable accommodation mandate in most situations.⁵⁷

The primary federal agency responsible for oversight of the FHA is the Department of Housing and Urban Development (HUD).⁵⁸ In addition to providing guidance indicating that university housing is subject to the FHA and what disability documentation requirements

⁴⁸ *Id.*

⁴⁹ 28 C.F.R. §§ 35.136(d), 36.302(c)(4).

⁵⁰ 28 C.F.R. §§ 35.136(e), 36.302(c)(5).

⁵¹ 42 U.S.C. § 3604.

⁵² See 42 U.S.C. §3602(b) (defining “dwelling” as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof”). Private clubs and religious organization housing are exempt. 42 U.S.C. § 3607.

⁵³ See *United States v. Univ. of Neb. at Kearney*, 940 F. Supp. 2d 974, 975–77 (D. Neb. 2013) (alleging that the university violated the FHA, and thus implying that the university is covered by the FHA).

⁵⁴ See Section IV(A), *infra* (providing an overview of how the array of federal statutes and regulations apply to different settings).

⁵⁵ See, e.g., *Pet Agreement*, TEX. ASS'N REALTORS, http://www.leaseaustin.net/assets/docs/lease_pet_agreement.pdf [<https://perma.cc/735J-3SHN>] (accessed Jan. 19, 2018) (restricting the pets that a tenant may keep on the tenant's property); *Rental Agreement Pet Policy Addendum*, SUN & SAGE PROP. SERVICES, <http://sunandsagepropertyservices.com/wp-content/uploads/2015/01/Sun-and-Sage-Property-Services-Pet-Policy.pdf> [<https://perma.cc/HQ68-BHGM>] (accessed Jan. 19, 2018) (describing restrictions on pets for property renters).

⁵⁶ See *supra* note 55 (providing examples of residential agreements that limit what pets the signer may have on their property).

⁵⁷ 42 U.S.C. § 3604(f)(3)(B).

⁵⁸ 42 U.S.C. §§ 3602(a), 3610. The statute also allows for DOJ enforcement in matters of general public importance. 42 U.S.C. §3613(c).

are permitted,⁵⁹ various types of housing are addressed in HUD regulations. These include general regulations applicable to most housing settings⁶⁰ and those applicable to federally administered and subsidized programs and public housing.⁶¹ These regulations are much less specific than the DOJ Title II/III ADA regulations on animal accommodations.⁶² Short-term lodging would be subject to Title III, and the Title III regulations specify that the animal be trained to perform a task that relates to the disability. ESAs are not covered because providing comfort is not considered to be a specific task. In housing settings, the types of animals would probably be less restrictive than those allowed within the ADA.

C. *Air Carrier Access Act and Other Transportation Statutes*

Air travel provides unique issues because it involves a passenger accessing public spaces such as the terminal and accessory businesses (restaurants, gift shops, etc.) within an airport terminal, and the aircraft itself. The ACAA primarily covers only the aircraft itself and, to some extent, related boarding procedures.⁶³ The ADA would be the primary statutory coverage for many aspects of the physical facility access. Many airports are entities that combine private and state or local governmental involvement. For example, an airport authority (a county governmental authority) might lease space to a private vendor and would also have arrangements for boarding gate use so that individuals can get on and off of the planes (which are regulated by the ACAA).⁶⁴

⁵⁹ See Press Release, Office of Pub. Affairs, Dep't of Justice, Fair Housing Lawsuit Filed Against the Univ. of Neb. at Kearney for Discrimination Against Students with Psychol. and Emotional Disabilities (Nov. 23, 2011), <https://www.justice.gov/opa/pr/fair-housing-lawsuit-filed-against-university-nebraska-kearney-discrimination-against> [<https://perma.cc/YS6C-6AFY>] (accessed Jan. 19, 2018) [hereinafter Press Release I] (addressing service animals and assistance animals in housing and HUD-funded programs).

⁶⁰ 24 C.F.R. § 5.303; Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63834, 63834 (Oct. 27, 2008). The 2008 amendments remove the requirement of certifying the disability, training, and the relationship of the animal in assisting with the disability. Verification of a disability is meeting the FHA or Section 504 definition, need for animal to provide assistance (not clear whether emotional support is to be considered to be assistance), and relationship between assistance and disability. More than just making a person “feel good” is required, although alleviating depression by an ESA might fulfill the requirement.

⁶¹ Public housing requirements are found in 24 C.F.R. § 960.705 and are similar to the previous categories, but are found in a separate regulation.

⁶² The regulations under the FHA only mention “animal accommodations” as an example of a reasonable accommodation that should be considered. 24 C.F.R. § 100.204(b) (2016).

⁶³ 49 U.S.C. § 41705 (2012).

⁶⁴ See 14 C.F.R. § 382.23(a) (2016) (discussing what facility is subject to Section 504); see also Nondiscrimination on the Basis of Handicap, 47 Fed. Reg. 25936, 25939–40 (June 16, 1982) (to be codified at 14 C.F.R. pt. 382) (discussing what constitutes a facility subject to Section 504). The ACAA applies to the airlines themselves and would apply to the airline operation that includes the facilities. An airport, however,

The Department of Transportation has specific regulations about animals for air travel, pursuant to the ACAA.⁶⁵ Other public transportation settings including mass transit, light rail, paratransit, commuter rail, over-the-road buses, demand responsive systems, taxis (and now Uber and Lyft type systems) do not currently have separate federal agency regulations related to animal accommodations.⁶⁶ Many of these settings have various guidance and policy documents from the providers of such services, but a regulatory framework other than reference to the DOJ regulations has not yet been developed.⁶⁷

D. Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) and how it would affect animals as accommodations is discussed in a separate article in this symposium issue, so it is not discussed in detail in this article.⁶⁸ It can be noted, however, that IDEA is different from the other statutes involving individuals with disabilities. IDEA is both a benefits and rights statute. Its goal is primarily to provide special education and related services for age-eligible students who fit a specifically defined list of disabilities.⁶⁹ Generally, an animal would not be considered a related service. Reference to the animal's presence might be something that could be incorporated into the individualized educational program. It might be, however, that the Rehabilitation Act or the ADA could require allowing the animal in a school setting.⁷⁰

III. APPLICATION TO PUBS, PADS, PLANES, AND PROFESSIONS

The following subsections provide an overview of how the array of federal statutes and regulations apply to different settings.

A. Pubs (Public Places and Spaces)

In recognition of the increasing attention and interest in having accommodation animals in public places, in 2010 the DOJ promulgated regulations that specify a number of key considerations on this

might have shops and restaurants and other vendors that would not be subject to the ACAA, but might be subject to Section 504 and the ADA or both.

⁶⁵ 14 C.F.R. § 382.117 (2016).

⁶⁶ See generally 49 C.F.R. §§ 1.1–1580.203 (2016) (providing the regulations of the Department of Transportation, which do not include separate agency animal accommodations regulations for these other public transportation settings).

⁶⁷ See e.g., *A Guide to Ruiding TARC3*, TRANSIT AUTHORITY OF RIVER CITY, <https://www.ridetarc.org/tarc3-riders-guide> [<https://perma.cc/AAG9-7U2P>] (accessed Mar. 10, 2018) (explaining the company's guidelines on the allowance of service animals on public transportation).

⁶⁸ See generally Huss, *supra* note 19 (reviewing a recent Supreme Court decision and other recent cases to illustrate the complicated issues that may arise when students with disabilities bring their assistance animals to school).

⁶⁹ 20 U.S.C. § 1400(c) (2012).

⁷⁰ Fry v. Napoleon Cmty. Sch., 137 S. Ct. 743, 752 (2017).

issue.⁷¹ These regulations clarify what animals are considered subject to these regulations, what documentation could be required, and what situations might make a request deniable.⁷² As noted previously, animal accommodations in Title II and Title III settings only permit dogs and miniature horses to be service animals and require that they be trained to perform a service.⁷³ The regulatory context demonstrates the balance that was struck with not requiring overly burdensome documentation such as official training documents, with the legitimate concerns of others in a setting.⁷⁴

Regulations applying to public places and spaces recognize that, unlike a setting such as housing or even to some degree employment, the animal accompanying someone in a public place may have a significant effect on other people in ways much different than almost any other type of accommodation. These regulations and the judicial decisions on this issue reflect those differences in many instances.⁷⁵

Title II applies generally to state and local governmental programs, such as higher education and courthouses.⁷⁶ Title III applies to twelve categories of privately operated programs open to the public.⁷⁷ The places most likely to be involved in animal accommodation cases include courthouses, health care settings, shopping malls, restaurants, and higher education. Another significant area is at institutions of higher education, which because of the unique issues involved in that setting is addressed separately below.

Courts have addressed several cases involving these kinds of public accommodations.⁷⁸ Those cases address safety and health considerations including local ordinances that prohibit certain breeds, concerns in health care settings, concerns where food is being served, issues of

⁷¹ DISABILITY RIGHTS SECTION, DEP'T. OF JUST., REVISED ADA REQUIREMENTS: SERVICE ANIMALS 1 (2011).

⁷² 28 C.F.R. §§ 35.104, 35.136, 36.102(c), 36.104.

⁷³ See 28 C.F.R. § 35.104 (“Service animal means any dog that is individually trained to do work or perform a task for the benefit of an individual with a disability.”); 28 C.F.R. § 36.104 (“Service animal means any dog that is individually trained to do work or perform a task for the benefit of an individual with a disability.”); 28 C.F.R. § 35.136(i) (expanding the term service animal to include miniature horses).

⁷⁴ See generally 75 Fed. Reg. 56164, 56178 (Sept. 15, 2010) (to be codified 28 C.F.R. pt. 35) (providing an analysis of the section on animal accommodations).

⁷⁵ See generally ROTHSTEIN & IRZYK, *supra* note 5, at 600–03 nn. 7–12 (detailing cases involving service animals in public accommodations and public service programs generally).

⁷⁶ See 42 U.S.C. § 12131 (defining public entity to include “instrumentality of a State or States or local government”).

⁷⁷ See 42 U.S.C. § 12181(7) (including places of lodging, food and drink service establishments, places of entertainment, places of public gathering, stores and shopping centers, service providers, public transportation terminals and stations, places of public display, places of recreation, educational facilities, social service establishments, and places of exercise and similar recreation as public accommodations); 28 C.F.R. § 36.104 (defining twelve places of public accommodation).

⁷⁸ See generally ROTHSTEIN & IRZYK, *supra* note 5, at 600–03 nn.7–12 (detailing cases involving service animals in public accommodations and public service programs generally).

allergies and phobias, and unique settings such as zoos.⁷⁹ Case law also addresses documentation issues (including the importance of training individuals to address that issue) as well as caring and handling obligations for service animals in various public accommodation settings.⁸⁰ The zone of responsibility is also addressed in case law. For example, when franchisees, licensees, and others are responsible for carrying out policy, where does liability lie?

B. Housing

Unlike settings where individual presence is for short periods of time, housing involves a full-time presence and impacts others in different ways. Housing is also a setting where the presence of a support animal can be essential.⁸¹

While the FHA does not clearly cover hotels, motels, and campus housing, this Section discusses all of those settings. Although hotels, motels, and short term rental properties such as Airbnb⁸² are probably only covered by Title III of the ADA, staying overnight in a room can raise issues such as damage to the room and impact on others in nearby rooms.⁸³ Campus housing ranges widely from the traditional

⁷⁹ *Id.*

⁸⁰ See *Hurley*, 2014 WL 580202, at *12 (finding that a hospital security officer violated the ADA by exceeding limited inquiries when he asked a woman about her service dog two to three times); see also *Davis v. Ma*, 848 F. Supp. 2d 1105, 1109, 1111–12, 1115–16 (C.D. Cal. 2012) (finding no discrimination when the plaintiff failed to provide adequate evidence that the dog was vaccinated); *Sears v. Bradley Cty. Gov't*, 821 F. Supp. 2d 982, 987, 989 (E.D. Tenn. 2011) (finding no intentional discrimination when a courthouse security officer sought clarification from court officers about the permissibility of service animals in court); *Dilorenzo v. Costco Wholesale Corp.*, 515 F. Supp. 2d 1187, 1193–94 (W.D. Wash. 2007) (finding that employees made permissible inquiries about qualifications of a dog accompanying a store patron when they asked what task or function the dog was trained to perform); *Grill*, 312 F. Supp. 2d at 1353 (finding no ADA violation where a private club's written policy regarding admittance of service animals into warehouse stores, required that employees first look for visual identification that the animal was a service animal and, in absence of visual evidence, permitted employees to inquire what "task or function" the animal performed without asking for specifics of an individual's disability); *Satterwhite v. City of Auburn*, 945 So. 2d 1076, 1086–87 (Ala. Crim. App. 2006) (finding that a woman who brought her dog into a book and video store was found guilty of criminal trespass, after she could not demonstrate that her dog was a service dog and was asked to leave); *Thompson v. Dover Downs, Inc.*, 887 A.2d 458, 465 (Del. 2005) (upholding the exclusion of a puppy from a casino when the puppy's owner refused to answer questions about its training); *Dohmen*, 794 N.W.2d at 300 (finding no discrimination where a program for the blind that used nonvisual theory disallowed the use of visual aids, including visual aid service animals).

⁸¹ See generally ROTHSTEIN & IRZYK, *supra* note 5, at 698 n. 26 (detailing cases where it was a necessity for an individual with a disability to have a support animal reside in his/her home).

⁸² See Jeremy Quittner, *Airbnb and Discrimination: Why It's All So Confusing*, *FORTUNE* (June 23, 2016), <http://fortune.com/2016/06/23/airbnb-discrimination-laws/> [<https://perma.cc/KD7H-QVD5>] (accessed Jan. 19, 2018) (explaining how Airbnb is likely exempt from Title II of the ADA).

⁸³ See Kathleen Pohlid, *New Regulations on Service Animals in the Hotel Industry*, *HOTEL EXECUTIVE*, http://hotelexecutive.com/business_review/2489/new-regulations-on-

“dormitory,” which is more likely to be a “license” than a “lease,” to university operated apartments, to Greek living housing (with private club exemptions).⁸⁴ All of these settings involve the constant presence and impact of accommodation animals on those who live or stay in proximity. For that reason, all of these housing settings are addressed in this section, although the primary focus is on housing clearly covered by the FHA.

Single-family dwellings purchased for residential use generally raise disability discrimination issues covered by both private and public policies. Purchase of a residential property in a common interest community, condo building, co-op, or homeowner’s association may be subject to restrictions regarding pets and animals. Similarly, zoning restrictions regarding animals can impact residential living in single-family residence situations.⁸⁵

Generally, the FHA applies to traditional apartment rental settings.⁸⁶ More recently, the increasing use of short-term rental of Airbnb properties has started to raise issues not clearly addressed in existing policies.⁸⁷ Are these properties to be treated more like hotels and motels (subject to Title III of the ADA) or more like landlord-tenant situations (subject to the FHA)? This can be important in terms of what types of animals must be allowed—or at least considered to be

service-animals-in-the-hotel-industry [<https://perma.cc/FYZ3-3K7Z>] (accessed Jan. 19, 2018) (detailing interesting industry guidance on regulations in hotel settings).

⁸⁴ See 28 C.F.R. § 35.104 (defining “Housing at a place of education” as “housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence”).

⁸⁵ See, e.g., *Anderson v. City of Blue Ash*, 798 F.3d 338, 348 (6th Cir. 2015) (finding that a miniature horse qualified as a service animal, because it was individually trained to do work and perform tasks of beneficial exercise in a girl’s backyard); *Cowart v. City of Eau Claire*, 571 F. Supp. 2d 1005, 1011 (W.D. Wis. 2008) (finding that an individual who claimed she needed more dogs than the city allowed did not demonstrate that she was disabled under Title II of the ADA, granting summary judgment for city).

⁸⁶ See *Chavez v. Aber*, 122 F. Supp. 3d 581, 587–88, 602 (W.D. Tex. 2015) (finding that the FHA applied to a plaintiff who filed suit under the FHA after her landlord tried to evict her for ownership of an emotional support pit bull that landlord claimed violated the “no pets policy”); see also *Warren v. Delvista Towers Condo Ass’n*, 49 F. Supp. 3d 1082, 1089 (S.D. Fla. 2014) (involving an FHA case where the plaintiff successfully challenged county ordinance banning pit bulls by claiming her pit bull was an emotional support dog); *Kromenhoek v. Cowpet Bay W. Condo. Ass’n*, 77 F. Supp. 3d 462, 466–67 (D.V.I. 2014) (involving an FHA claim that the tenant’s emotional support animal and a requested waiver of the “no pets policy”); *Smith v. Powdrill*, No. CV 12–06388 DDP (RZx), 2013 WL 5786586, at *12 (C.D. Cal. Oct. 28, 2013) (granting summary judgment under the FHA to a tenant requesting a companion animal to address symptoms of depression, anxiety, and other disorders); *Ass’n of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 892 F. Supp. 2d 1268, 1277–88 (D. Haw. 2012) (denying summary judgment to the plaintiff, and allowing an FHA case regarding emotional support animals in apartment complex that did not allow pets to proceed).

⁸⁷ See *Jeremy Quittner*, *supra* note 82 (explaining that non-discrimination lawsuits have been filed against Airbnb, but the courts have yet to decide whether non-discrimination laws apply to Airbnb).

allowed—and what kinds of documentation might be permissible to request.

As noted previously, the FHA's statutory language and regulations are far less specific than the ADA regarding animal accommodations in housing.⁸⁸ Some judicial interpretations have provided guidance on these requirements. For example, several cases have addressed whether an individual even has a disability that would provide a right to be accommodated. These cases include issues of documentation not only of the disability, but its relationship to the requested accommodation.⁸⁹

Other cases address what types of animals are allowed. These cases address an array of situations including specific types of animals, the size of animals, specific breeds, and even the number of animals permitted.⁹⁰ Courts have also reviewed issues about the behavior

⁸⁸ See 24 C.F.R. § 100.204(b) (referencing animal accommodations in Example 1).

⁸⁹ See *Kromenhoek*, 77 F. Supp. 3d at 466 (involving the plaintiff's psychologist who provided defendant landlord with a note explaining the plaintiff's anxiety disorder and the plaintiff's need for an emotional support animal to alleviate symptoms of her condition); see also *Warren*, 59 F. Supp. 3d at 1084 (stating that plaintiff provided a doctor's note to landlord defendant explaining plaintiff's medical condition and the need of a support animal to help alleviate that condition); *Powdrill*, 2013 WL 5786586, at *2 (involving a plaintiff that provided defendant landlord with a doctor's note describing her condition and how her service dog was needed for her emotional support); *Liliuokalani Gardens*, 892 F. Supp. 2d at 1270–71 (involving an apartment complex that required the plaintiff to provide documentation of his disability and how his service dog alleviated the disability to determine whether an accommodation to the no pets policy was necessary and appropriate).

⁹⁰ See *Anderson*, 798 F.3d at 346, 354, 364–65 (finding that a miniature horse qualifies as a service animal, and that horse was individually trained to do work and perform task of beneficial exercise in girl's backyard); see also *Ajit Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, 765 F.3d 1277, 1281, 1289 (11th Cir. 2014) (holding that veteran with PTSD, chronic anxiety, and depression could pursue claim that modification of condo rule limiting pet size would affect his having an emotional support animal that was prescribed by the veteran's treating psychiatrist); *Cowart*, 571 F. Supp. 2d at 1012 (finding that an individual who claimed she needed more dogs than city allowed did not demonstrate that she was disabled under Title II of the ADA); *Prindable v. Ass'n of Apartment Owners of 2987 Klakaua*, 304 F. Supp. 2d 1245, 1260 (D. Haw. 2003) (finding that a dog was not an individually trained service animal and therefore an accommodation was not required); *Janush v. Charities Hous. Dev. Corp.*, 169 F. Supp. 2d 1133, 1134–36 (N.D. Cal. 2000) (finding that tenant's alleged need for two birds and two cats to act as service animals overcame landlord's arguments for a bright-line rule that accommodation of animals other than service dogs was per se unreasonable because regulations provided a broad definition of service animals); *Oras v. Hous. Auth. of the City of Bayonne*, 861 A.2d 194, 203–04 (N.J. Super. Ct. App. Div. 2004) (ruling that a court must give consideration to the needs of one seeking a reasonable accommodation, such as changing an otherwise generally applicable rule to make its burden less onerous on the person seeking an accommodation, and it was proper for the individual here to seek an accommodation for his forty-seven pound dog in relation to the defendant's policy of limiting dogs to twenty pounds); *Timberlane Mobile Home Park v. Wash. State Human Rts. Comm'n*, 95 P.3d 1288, 1289–91 (Wash. Ct. App. 2004) (ruling that the dog had not received training to assist a mobile home resident with severe migraines, and therefore the resident failed to show that her dog met the state's definition of "service animal").

and other impact of animals.⁹¹ These cases include issues of what can be required in terms of vaccinations, assistance for the animal, and fees that can be required in various settings.⁹²

C. Travel

The individual who attends a conference at a hotel or meets a friend at a shopping mall may have relatively clear guidance on what federal law requires with respect to service and support animals. It can be less clear, however, what is required with respect to the means of travel the individual uses to get there. With the exception of air travel, other means of transportation—such as trains, subways, bus systems, and taxis and similar services—are generally subject to either the ADA, Section 504 (when the program receives federal financial assistance), or both.⁹³ While major entities within many of these industries have adopted policies and practices related to animal accommodations,⁹⁴ the specific regulatory scheme for these settings is not as clear.

1. Air Travel

The only type of transportation that currently has federal regulatory guidance about animal accommodations specific to that industry is air travel.⁹⁵ Most of that regulation applies only to the aircraft itself, and to a lesser extent, boarding and disembarking. Depending on how

⁹¹ See *Warren*, 59 F. Supp. 3d at 1089 (concluding that fact issues existed regarding whether emotional support dog posed a direct threat to members of a condominium association); see also *Timberlane Park*, 95 P.3d at 1291 (reversing an administrative law judge's prior ruling because, in part, of the ALJ's reasoning "that Spicey's training consisted of getting what she wanted—attention from Candida—[which] would make any family pet into a service animal").

⁹² See *Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F. Supp. 2d 1028, 1032 (D.N.D. 2011) (charging an animal fee without a clear explanation about when fees applied created triable issues about whether denial of fee waiver was pretext); see also *Intermountain Fair Hous. Council v. CVE Falls Park, L.L.C.*, No. 3:09-cv-58, 2011 WL 2945824, at *6 (D. Idaho Mar. 30, 2011) (finding that imposing a security deposit for service animals is impermissible under the FHA).

⁹³ 29 U.S.C. § 794(a); ADA Nat'l Network, *THE ADA & ACCESSIBLE GROUND TRANSPORTATION 1–2* (2016), https://adata.org/sites/adata.org/files/files/ADANN%20_Accessible%20Transportation_2016_final.pdf [<https://perma.cc/2FPJ-RKWN>] (accessed Jan. 19, 2018).

⁹⁴ See, e.g., DELTA, *TRAVELING WITH DISABILITIES 6*, https://www.delta.com/content/dam/delta-www/pdfs/Delta_Disability_Brochure_09_06-13-08.pdf [<https://perma.cc/S5DL-EPXL>] (accessed Jan. 19, 2018) (providing policies for flying with a "service/emotional support animal"); *Accessible Services*, ALA. AIRLINES (2017), <https://www.alaskaair.com/content/travel-info/accessible-services/specialservices-support-animals> [<https://perma.cc/VM6U-A9X9>] (accessed Jan. 19, 2018) (providing policies for flying with ESAs and service animals); *Service Animals and Emotional Support or Psychiatric Service Animals*, AM. AIRLINES, <https://www.aa.com/i18n/travel-info/special-assistance/service-animals.jsp> [<https://perma.cc/X772-DW42>] (accessed Jan. 19, 2018) (providing policies for flying with ESAs and psychiatric support animals).

⁹⁵ 14 C.F.R. § 382.55(a)–(b)(1) (2016).

the airport is funded and whether a private or state/local government authority operates it, what is allowed within the airport itself is covered by the ADA or Section 504.

The ACAA was the first comprehensive federal law to directly prohibit discrimination on the basis of disability on airlines.⁹⁶ Since its enactment, the Department of Transportation has issued regulations applying to a range of issues.⁹⁷ There are specific regulations beyond the general nondiscrimination provisions that clarify requirements for air travel.⁹⁸ These regulations clarify that only service animals are required, not ESAs or service-animals-in-training, to be allowed under the ACAA.⁹⁹ This does not mean that airlines might not have broader policies regarding animals on planes. All major airlines have their own policies, and these policies often include information on the specific documentation that would be required.¹⁰⁰

⁹⁶ 49 U.S.C. § 41705; ROTHSTEIN & IRZYK, *supra* note 5, at 734–47.

⁹⁷ See 14 C.F.R. § 382 (including regulations relating to accessibility on the aircraft, auxiliary aids, and services in air terminals regarding gate announcements and other information); see also Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834, 63834–838 (Oct. 27, 2008) (to be codified at 24 C.F.R. pt. 5) (amending HUD’s regulations governing the requirements for pet ownership in HUD-assisted public housing and multifamily housing projects for the elderly and persons with disabilities); Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56164, 56192 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35) (relating to nondiscrimination on the basis of disability in state and local government services).

⁹⁸ Guidance Concerning Service Animals in Air Transportation, 68 Fed. Reg. 24875, 24875 (May 9, 2003) (to be codified at 14 C.F.R. pt. 382) (clarifying and applying the ACAA in determining (1) whether an animal is a service animal and its user a qualified individual with a disability, (2) how to accommodate a qualified person with a disability with a service animal in the aircraft cabin, and (3) when a service animal legally can be refused carriage in the cabin); see also 14 C.F.R. § 382.117(e)–(f) (permitting airlines to refuse to accept service animals (1) without current documentation of need, and (2) if they are certain unusual animals); 14 C.F.R. § 382.55(a) (allowing service animals on planes); Jacquie Brennan & Vinh Nguyen, *Service Animals and Emotional Support Animals*, ADA Nat’l Network, <https://adata.org/publication/service-animals-booklet> [<https://perma.cc/249G-87SB>] (accessed Jan. 19, 2018) (clarifying the documentation owners of service animals should have when engaging in air travel).

⁹⁹ 14 C.F.R. §§ 382.117(a), (d) (requiring a service animal to accompany a passenger with a disability, and providing for what documentation can be required, including: service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags, or credible verbal assurances from the person using the animal). There has been substantial criticism of the loose standards being applied to obtain identification cards; see, e.g., Katrena Hamberger, *Too Many Take Advantage of Term ‘Service Dog’*, TIMES REC. NEWS (Nov. 5, 2017, 12:45 AM), <http://www.times-recordnews.com/story/life/2017/11/05/too-many-take-advantage-term-service-dog/825235001/> [<https://perma.cc/FLX4-DN9Q>] (accessed Jan. 19, 2018) (“There [is] also a plethora of websites that will be happy to sell anyone a vest and ID card declaring your dog a service animal. However, there’s usually no requirement to prove the true abilities of the service animal. Just send in your money and you will receive what you want.”).

¹⁰⁰ See *supra* note 94 (giving examples of airline policies and documentation requirements).

Unlike other public accommodations, airlines are able to require more documentation,¹⁰¹ but the regulations do not limit permissible service animals to specific types of animals.¹⁰² Airlines also seem to be required to allow a broader category of animals—beyond dogs and miniature horses—but they are permitted to exclude unusual animals such as snakes, reptiles, spiders, ferrets, and rodents. Foreign travel might be more restrictive, however.¹⁰³ While not directly provided for in the ACAA, it appears that the airlines are also permitted to determine appropriate requirements for how much space an animal can occupy to ensure safety in exiting the aircraft and other safety concerns.¹⁰⁴

As noted previously, federal regulations on animals as accommodations provides limited acknowledgement of others' fears and allergies.¹⁰⁵ The general regulatory approach to this concern seems to be one of interactive resolution, i.e., just try to work it out.¹⁰⁶ Perhaps greater recognition of the unique setting of an aircraft as being a small space, with confined areas, recycled air, and some long trips, could encourage greater attention to this.¹⁰⁷

As a practice, airlines have been more flexible than some other public accommodation programs, but media coverage has demonstrated that this welcoming attitude has opened the floodgates, and airlines may rethink their willingness to allow turkeys, ducks, pigs, and other animals on board without greater documentation and con-

¹⁰¹ 14 C.F.R. §§ 382.55(a)–(b)(1).

¹⁰² 14 C.F.R. § 382.117(f).

¹⁰³ *Id.*

¹⁰⁴ See, e.g., *In-Cabin Pets*, UNITED AIRLINES, https://www.united.com/web/en-US/content/travel/animals/in_cabin.aspx [<https://perma.cc/A9CM-DBV9>] (accessed Jan. 19, 2018) (restricting the size of kennels that can be brought on the plane); *Service Animals*, AM. AIRLINES, <https://www.aa.com/i18n/travel-info/special-assistance/service-animals.jsp> [<https://perma.cc/2AE9-QDZY>] (accessed Jan. 19, 2018) (allowing service animals to be carried on at no charge if they meet specific size requirements); *Service Animals*, UNITED AIRLINES, https://www.united.com/web/en-US/content/travel/specialneeds/disabilities/assistance_animals.aspx [<https://perma.cc/NU2D-CJW8>] (accessed Jan. 19, 2018) (restricting the size of emotional support and psychiatric assist animals that can be brought on the plane); *Traveling with Pets*, AM. AIRLINES, <https://www.aa.com/i18n/travel-info/special-assistance/pets.jsp> [<https://perma.cc/NDU2-SC23>] (accessed Jan. 19, 2018) (restricting the size of kennels for cats and dogs).

¹⁰⁵ An interesting but unresolved issue is where such a condition might itself rise to the level of being a disability. Then the question is whose disability should be given priority.

¹⁰⁶ Nondiscrimination on the Basis of Disability in State and Local Government Services, 56 Fed. Reg. 35694, 35716 (July 26, 1991) (to be codified at 28 CFR pt. 35); Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56164, 56177 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35); Amendment of Americans With Disabilities Act Title II and Title III Regulations to Implement ADA Amendments Act of 2008, 81 Fed. Reg. 53204, 53223 (Aug. 11, 2016) (to be codified at 28 C.F.R. pts. 35, 36).

¹⁰⁷ For example, implementing a required reservation system that mandates anyone making a flight reservation indicate intent to bring an animal and also allows an individual with phobias and allergies to request an animal-free flight could be considered.

cern for others.¹⁰⁸ It may also be that this increase is a response to the high fees required by some airlines for animals not categorized as accommodation animals.¹⁰⁹ Another concern is that traveling in the cargo hold has proven to be quite adverse to animal health, including death, because of temperature and air pressure problems.¹¹⁰

One of the concerns regarding animals in air travel settings is the need for them to relieve themselves. Unfortunately, not all airports have pet relief stations within the gate areas, requiring travelers to exit the airport and return through security check points. This is an issue that does not rise to the level of disability discrimination accommodation, but it does highlight an area ripe for consideration. Because most airports are financed in part by federal funding, it may be that additional federal appropriations improve the availability of such relief stations.

2. *Other Transportation*

Publicly available transportation is operated in different locales by a wide range of public/private relationships. Some are privately-operated programs with considerable governmental regulation and oversight. Such transportation systems include subways, fixed-route buses, paratransit, rail (long distance and light rail), shuttles and limousine services, and taxicabs (and more recently UberTM- and LyftTM-type services). Generally speaking, all of these programs fall under the Title II/III ADA regulations of 2010 that have similar requirements for both state and local governmental programs and private providers of programs available to the public.¹¹¹

As is the case with airlines, beyond the regulations themselves, it is the policy and practice of the corporate provider that is the source of

¹⁰⁸ Hugo Martin, *Airlines Seek to Limit Types of Therapy Animals Allowed on Planes*, L.A. TIMES (Sept. 24, 2016, 10:00 AM), <http://www.latimes.com/business/la-fi-travel-briefcase-animals-20160924-snap-story.html> [https://perma.cc/TH2N-LHHY] (accessed Jan. 19, 2018); *Emotional Support Duck Wins Over the Internet*, NEWS.COM.AU (Oct. 20, 2016, 9:43 AM), <http://www.news.com.au/travel/travel-ideas/weird-and-wacky/emotional-support-duck-wins-over-the-internet/news-story/96fb6003136c51ec814bc4c882ae4622> [https://perma.cc/J3RG-9DDY] (accessed Jan. 19, 2018); *In-Cabin Pets*, UNITED, https://www.united.com/web/en-US/content/travel/animals/in_cabin.aspx (noting a \$125 fee for pets brought on board with an additional charge of \$125 for long flights) [https://perma.cc/DVA3-LXYE] (accessed Mar. 10, 2018).

¹⁰⁹ See, e.g., Benjamin Siu, *Emotional Support Animal Policy Updated for 2 Major Airlines*, ABCNEWS (Mar. 1, 2018), <http://abcnews.go.com/US/emotional-support-animal-policy-updated-major-airlines/story?id=53439217> [https://perma.cc/7HQR-R29B] (accessed Mar. 10, 2018) (describing United's policy update for allowing service animals on board flights after an increase in animal-related incidents in 2017).

¹¹⁰ See, e.g., David Thyberg, *Is It Dangerous for Your Pet to Travel in the Travel Compartment on an Airplane?*, USA TODAY, <http://traveltips.usatoday.com/dangerous-pet-travel-luggage-compartment-airplane-9941.html> [https://perma.cc/4HKX-MLC6] (accessed Jan. 19, 2018) (describing the negative health effects on pets traveling in the cargo hold).

¹¹¹ See *supra* Section I(A)(1)–(2) (discussing regulations for service animals under Title II and Title III).

limits on animals. An individual would need to challenge a particular policy or practice as violating the ADA. Like airlines, increasing demand to bring animals has resulted in media attention to these issues.¹¹² In particular, attention to the newer on-demand services like Uber and Lyft (and whether they are even subject to Title III) has been raised.¹¹³ There is very little judicial interpretation of these issues.

D. Work

There are few cases involving animals as an accommodation in employment. The interest in bringing animals into the workplace, however, is significant. As a general framework, the ADA regulations for Title I are applicable regarding reasonable accommodations.¹¹⁴ A detailed review of those requirements is beyond the scope of this Article.¹¹⁵

In the context of animal accommodations, employment disability discrimination policy contemplates the obligation to engage in an interactive process to address accommodation issues.¹¹⁶ Issues of co-worker “preference” might also arise, in the context of coworker fears, phobias, and allergies. Employment settings will impact coworkers to a much greater degree because of the proximity to others (other employees, customers, etc.) and longer periods of presence than an individual bringing an assistance animal to a public setting for an

¹¹² See Jennifer Dixon, *Too Many Passengers Fly with Phony Support Pets, Critics Say*, DETROIT PRESS (updated Dec. 28, 2016, 11:34 AM) <http://www.freep.com/story/news/local/michigan/2016/12/27/too-many-air-passengers-fly-phony-support-pets-critics-say/93969310/> [<https://perma.cc/CQ79-RNSL>] (accessed Jan. 19, 2018) (discussing the increased demand in bringing animals on airplanes); see also Mari Payton, “Emotional Support” Animals a Growing Problem on Airplanes: Flight Attendants, NBC SAN DIEGO (Aug. 7, 2015), <http://www.nbcsandiego.com/news/local/Emotional-Support-Animals-a-Growing-Problem-on-Airplanes-Flight-Attendants-320993451.html> [<https://perma.cc/HDE9-XG7P>] (accessed Jan. 19, 2018) (investigating ESAs and how airlines handle them); Hugo Martin, *supra* note 108 (describing how airlines are trying to restrict or limit the types of animals that can be brought onto airlines).

¹¹³ See Nat’l Fed’n of the Blind of Cal. v. Uber Tech., Inc., 103 F. Supp. 3d 1073, 1076 (2015) (leaving undecided whether Uber is subject to Title III, but raising the issue); see also Sarah Emerson, *Uber Has a Big Ol’ Dog Problem*, MOTHERBOARD (May 25, 2016, 6:00 AM), https://motherboard.vice.com/en_us/article/mg779b/what-uber-really-thinks-about-your-dog [<https://perma.cc/NT6Z-TPKP>] (accessed Jan. 19, 2018) (describing how Uber drivers allegedly refuse to accommodate people with service dogs).

¹¹⁴ *Job Accommodation Network Guidance on Service Animals in the Workplace*, JOB ACCOMMODATION NETWORK, <https://askjan.org/media/servanim.html> [<https://perma.cc/P53B-RM8F>] (accessed Jan. 19, 2018). This website, from an organization created through the Department of Education, provides information to employers and others about accommodations in employment settings and has been in existence since the 1980s. The EEOC Interpretive Guidance to the regulations mentions guide dogs, and notes that such dogs should be allowed but need not be provided. 29 C.F.R. pt. 1630 app. §1630.2(o) (2016) (“[I]t would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog for the employee.”).

¹¹⁵ ROTHSTEIN & IRZYK, *supra* note 5, § 4:20 n. 85.

¹¹⁶ 29 C.F.R. § 1630.2(o)(3) (2016).

occasional short period of time. Employees who are accommodated by allowing service or ESAs are likely to be allowed animals other than dogs and miniature horses. Regardless of what kind of animal, the employee is responsible for its needs. For example, an accommodation of having a coworker walk the dog would not be required because it would be viewed as a personal service.¹¹⁷ Other Title II/Title III regulations related to animal control would probably be incorporated by reference, but the regulations relating to documentation would probably not be. Basically, an employer could probably require more documentation of the disability and the relationship of the animal support to the disability than can be required under Title II or Title III of the ADA.

IV. SPECIAL SITUATIONS

A. Higher Education

College campuses are unique places of accommodation because they often involve use of space in a more intense way than the short-term visitor to a shopping mall or restaurant or even a hotel.¹¹⁸ “Campus use” can include housing and regular presence in classrooms and libraries. Campus settings involve not only students, but also staff and faculty and visitors to campus for a range of events, including sports and performance events. Study abroad programs raise even more complex situations. Student membership in fraternities and sororities is also complicated by the private club exemption in a setting that might be heavily regulated or facilitated by the university.¹¹⁹ Students are often placed in off-campus internships and externships that require examination of who is responsible for policies on accommodations. Finally, individuals seeking animal accommodations might be patients in university-operated health care settings, which raises another layer of complexity.

Most higher education institutions are subject to Section 504 because they receive federal financial assistance through grants and/or

¹¹⁷ LINDA CARTER BATISTE, *JOB ACCOMMODATION NETWORK, PERSONAL ASSISTANCE SERVICES (PAS) IN THE WORKPLACE* 3–4 (2017), <https://askjan.org/media/downloads/PASDocument.pdf> [<https://perma.cc/Z44T-EQL8>] (accessed Jan. 19, 2018); ROBERT SILVERSTEIN, *POLICY BRIEF: THE APPLICABILITY OF THE ADA TO PERSONAL ASSISTANCE SERVICES IN THE WORKPLACE*, 3 (2003).

¹¹⁸ See ROTHSTEIN & IRZYK, *supra* note 5, §§ 3:18–3:19 (discussing disability discrimination law and how it applies to higher education); see also C.W. Von Bergen, *Emotional Support Animals, Service Animals, and Pets on Campus*, 5 *ADMIN. ISSUES J.* 15, 15–34 (2015) (providing an overview and guidance about various settings involving animals on campus).

¹¹⁹ See generally Claudine McCarthy, *Limit Liability Related to Students with Disabilities in Fraternity, Sorority Houses*, *DISABILITY COMPLIANCE FOR HIGHER EDUC.* (Feb. 18, 2015), <http://www.disabilitycomplianceforhighereducation.com/m-article-detail/limit-liability-related-to-students-with-disabilities-in-fraternity-sorority-houses.aspx> [<https://perma.cc/5L7H-CNKL>] (accessed Jan. 19, 2018) (discussing complications related to providing fraternity and sorority housing).

student financial assistance.¹²⁰ All of them are subject to either Title II of the ADA (private institutions) or Title III of the ADA (state or locally operated institutions).¹²¹ Student housing might be subject to the FHA, and employment would be subject to Titles I and II of the ADA or Section 504, or all three. The regulations under Section 504 provide a very general reference to student housing by requiring that such housing should be provided to students with disabilities on the same terms as to those who do not have disabilities,¹²² and also requiring that entities subject to Section 504 ensure that facilitation of housing provided by others is available in a way that is not discriminatory.¹²³

For most aspects of higher education (attending class, going to the library, participating in social activities, and attending sports events), either Title II or Title III (or a combination) applies.¹²⁴ But institutions of higher education also involve housing and employment, which raise additional complexities. Higher education is the setting in which there has been the greatest institutional policy and judicial attention to issues of animals as accommodations.¹²⁵ Several key cases have resulted in settlements.¹²⁶ While these settlements do not provide judicial precedence, they can provide guidance to institutions.

¹²⁰ ROTHSTEIN & IRZYK, *supra* note 5, § 3:1.

¹²¹ *Id.*

¹²² 34 C.F.R. § 104.45(a) (2016).

¹²³ *Id.* § 104.45(b).

¹²⁴ ROTHSTEIN & IRZYK, *supra* note 5, § 3:19.

¹²⁵ See *id.* §§ 3:18–3:19 (providing an overview of disability discrimination law in higher education). See generally Mark Bauman et al., *Service, Comfort or Emotional Support? The Evolution of Disability Law and Campus Housing*, 40 J. COLLEGE & U. STUDENT HOUSING 142, 142–57 (2013) (discussing the trends in disability law and how they affect campus housing); see also Von Bergen, *supra* note 118 (providing an overview and guidance about various animal settings on campus); Rebecca J. Huss, *Canines on Campus: Companion Animals at Postsecondary Educational Institutions*, 77 MO. L. REV. 417, 444–78 (2012) (discussing issues surrounding animals at colleges and universities); Katherine R. Powers, *Dogs in Dorm: How The United States v. University of Nebraska at Kearney Illustrates a Coverage Gap Created by the Intersection of the Fair Housing Act and Disability Law*, 47 CREIGHTON L. REV. 363, 363–68 (2014) (addressing the challenges of determining the applicability of the FHA to campus housing and suggesting the need for better guidance on the overlap); Jan Hoffman, *Campus Debate Rising Demands for “Comfort Animals”*, N.Y. TIMES (Oct. 4, 2015), http://www.nytimes.com/2015/10/05/us/four-legged-roommates-help-with-the-stresses-of-campus-life.html?emc=eta1&_r=0 [<https://perma.cc/A4FQ-UQLF>] (accessed Jan. 19, 2018) (reporting on stories of college students around the country and their ESAs).

¹²⁶ There are two high profile settlements that have addressed this issue. In a case brought by the DOJ against Kent State University, filed in 2014, the applicability of the FHA to campus housing was at issue. Because the case was settled, judicial precedent does not exist. The DOJ had alleged that Kent State’s policies did not permit students with psychological disabilities to have emotional support animals in university housing. In the settlement, Kent State agreed to pay \$100,000 to two former students, to pay \$30,000 to a fair housing organization that advocated on behalf of the students, to pay \$15,000 to the United States, and to adopt a housing policy allowing emotional support animals. Joint Motion to Approve and Enter Consent Decree, *United States v. Kent State Univ.*, No. 5:14-cv-1992-JRA (N.D. Ohio Jan. 4, 2016). The other major settlement

The 2010 regulations under the ADA provide some guidance about some types of campus housing, but the guidance is not entirely clarifying. These regulations differentiate between types of housing at places of education.¹²⁷ This differentiation, however, is found within the sections relating to architectural accessible design.¹²⁸ While HUD has taken the position that university housing is covered by the FHA,¹²⁹ this issue has never been definitively decided by the courts.¹³⁰ The HUD's guidance is not a federal regulation that has gone through no-

involved the University of Nebraska at Kearney. Although the applicability of the FHA was addressed in a judicial opinion, *Kearney*, 940 F. Supp. 2d at 974, the case was settled before a judicial determination of liability was reached. Press Release, Office of Public Affairs, Department of Justice, Justice Department and University of Nebraska at Kearney Settle Lawsuit Over Rights of Students with Psychological Disabilities to Have Assistance Animals in Student Housing (Sept. 3, 2015), <https://www.justice.gov/opa/pr/justice-department-and-university-nebraska-kearney-settle-lawsuit-over-rights-students> [<https://perma.cc/W9F2-5Q5V>] (accessed Jan. 19, 2018) [hereinafter Press Release II]. The case involved the university asking for details of a student's treatment, medications, and doctor visit schedules. Press Release I, *supra* note 59. The DOJ position was that university requirements for detailed information went beyond what was needed to review the accommodation request in a housing setting. *Id.* The settlement provided for payment of \$140,000 to two students denied assistance animals in university apartments and a change in policies to allow emotional assistance animals in university housing for students with psychological disabilities where animals provide necessary therapeutic benefits. Press Release II, *supra*. The case did not resolve, but it does raise the issue of differing documentation requirements that might be allowed under the ADA and FHA.

¹²⁷ 28 C.F.R. § 35.151(f) (2016) provides, "Housing at a place of education that is subject to this section shall comply with the 2010 Standards applicable to transient lodging, including, but not limited to, the requirements for transient lodging guest rooms in sections 224 and 806 subject to the following exceptions. For purposes of the application of this section, the term 'sleeping room' is intended to be used interchangeably with the term 'guest room' as it is used in the transient lodging standards." *Id.* Additional provisions in this section differentiate between short-term stay housing (which does seem to be subject to either Title II or Title III) and apartments or townhouse facilities provided by or on behalf of places of education leased on a year-round basis only to graduate students or faculty, and that do not have public use or common use areas for educational programming are not considered to be transient lodging. Under Title III regulations, 28 C.F.R. § 36.104 definitions provide that a public accommodation includes places of lodging, which would be primarily short-term lodging (such as hotels, short-term guest rooms or sleeping rooms). *Id.* "Housing at a *place of education* means housing operated by or on behalf of an . . . undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments or other places of residence." *Id.*

¹²⁸ See 28 C.F.R. § 35.151(f) (differentiating between "housing units containing accessible sleeping rooms," "[m]ulti-bedroom housing units," and "[a]partments or townhouse[s]" within the "New construction and alterations" section); 28 C.F.R. § 36.406(e) (2016) (making the same distinctions in the "Standards for new construction and alterations" section).

¹²⁹ See *Kearney*, 940 F. Supp. 2d at 975–77 (alleging that the university violated the FHA, and thus implying that the university is covered by the FHA).

¹³⁰ See *id.* (arguing that student housing is subject to the FHA). This case was later settled. Press Release II, *supra* note 126; see also *Franchi v. New Hampton Sch.*, 656 F. Supp. 252, 257, 260–61 (D.N.H. 2009) (finding that the FHA applied to student housing but decided before the 2010 clarifying regulations).

tice and comment, so it is not absolutely settled that all university housing is covered. For example, while university operated apartments are almost certainly covered by FHA, it is possible that a court might find that the more old-fashioned “dorm” rooms are not, and are instead to be treated as licensed arrangements, not leases. It can make a difference because of the different rules under ADA (limited to dogs and miniature horses and requiring the animal to be trained to perform a service but limiting documentation) and FHA (permitting more types of animals but allowing more documentation).¹³¹ While this distinction has been raised in litigation, courts have not favored that distinction and seem to recognize that all university housing is covered under FHA.¹³²

Even more complicating is the issue of fraternities and sororities, their housing, and how that might be an issue for a student wanting to have an animal (often an ESA) in the Greek housing setting.¹³³ A detailed discussion of this issue is beyond the scope of this Article.

Greek housing and traditional dormitory settings often involve the right to access living space beyond what might be expected in a landlord tenant situation. For example, custodial and cleaning staff or other members of the fraternal organization might have a regular privilege to enter student sleeping rooms. This raises potential issues about safety. The ADA requires that the animal be under the individual’s control,¹³⁴ which makes sense in a public setting. The FHA would involve similar expectations, but control within one’s sleeping room is different than control in a public space such as a restaurant or shopping mall. Does the ESA have to be caged when the student leaves the room? Related to this issue are the amenities that go with campus housing. Often there are spaces for social interaction, food service, and other “public” areas, such as a laundry room or lobby area that students would expect to be able to use in the building in which they live. Can an ESA accompany students to those spaces or only be allowed in the “private” sleeping space? These questions are not clearly resolved, and would benefit from official guidance. How would that work for campus settings where students live in one building but can obtain food service access in other buildings?

¹³¹ See *supra* Section II.A (discussing how the ADA only requires dogs and miniature horses to be included, and requires little documentation), Section II.B. (mentioning that the FHA regulations are broader than the ADA regulations and likely not as restrictive).

¹³² See *e.g.*, *Kearney*, 940 F. Supp. 2d at 975–77 (arguing that student housing is subject to the FHA). This case was later settled; see *supra* note 126 and accompanying text (discussing *Kearney* and its later settlement); see also *Franchi*, 656 F. Supp. at 257, 260–61 (finding that the FHA applied to student housing but decided before the 2010 clarifying regulations).

¹³³ Claudine McCarthy, *supra* note 119.

¹³⁴ DISABILITY RIGHTS SECTION, *supra* note 71, at 2.

Because of the increase in requests for animals on campus, several organizations have provided guidance.¹³⁵ While this guidance is often very helpful, it does not provide definitive answers as official federal regulations could. Caution should be paid to federal agency “guidance,” opinion letters, and answers to frequently asked questions. While reliance on these can often be significant in demonstrating good faith conduct, these forms of information are not official, and under the Trump administration, it is not clear how much reliance can be placed on such information, including even recently-enacted regulations.¹³⁶

There is nothing within the regulations that addresses whether a higher education institution can require or encourage students to “register” when there is an animal on campus. The purpose of requiring animals to be registered in housing would be to know in emergency situations, such as a fire, if an animal is in a housing unit. This is an issue that would benefit from being more clearly addressed. It is probable, however, that programs can require vaccinations of animals to the extent it is consistent with local legal requirements.

B. Health Care Settings

The general requirements under Section 504 and the ADA regarding animal accommodations apply to most health care settings,¹³⁷ The reasonable accommodation in these settings, however, would probably only apply to dogs and miniature horses. Health care settings include doctors’ offices, clinics, and hospitals. Because of substantial concerns about health risks that might be raised with the presence of an animal, the application of these requirements to health care settings can raise unique issues. In addition, one can imagine that individuals who are

¹³⁵ The Association of Higher Education and Disabilities (AHEAD) is an excellent source of guidance. The organization specifically notes that it does not give legal advice, and a 2013 article by Scott Lissner provides an excellent overview of the issues. Please note that the article was published before some of the cases were resolved and settled in higher education situations. *See generally* Scott Lissner, *Staying Out of the Dog House, Revisited, A Commentary on U.S. Dep’t of Housing and Urban Development v. Univ. of Neb. Kearney*, PORTLAND COMMUNITY C. (May 21, 2013), <https://www.pcc.edu/disability-services/wp-content/uploads/sites/16/2017/08/stay-out-dog-house.pdf> [<https://perma.cc/2UXW-X6SD>] (accessed Jan. 19, 2018) (discussing issues related to service animals and higher education housing). The National Association of College & University Attorneys (NACUA) is also an important resource for guidance on issues such as this. *See also* Elizabeth Brody Guck & Josh Dermott, *Accommodating Service and Assistance Animals on Campus Making Heads or Tails of the ADA, FHA, and Section 504*, CATH. U. AM. (Apr. 14, 2011), <http://counsel.cua.edu/fedlaw/nacuanoteserviceanimals.cfm> [<https://perma.cc/UYN4-K5YN>] (accessed Jan. 19, 2018) (providing perspectives on proactive planning, although it was written prior to recent settlements).

¹³⁶ *See, e.g.*, David M. Perry, *Companies that Exploit Disabled People Have a Friend in Jeff Sessions*, PACIFIC STANDARD (Jan. 3, 2018), <https://psmag.com/economics/jeff-sessions-roll-back-disability-rights> [<https://perma.cc/72K5-K25R>] (accessed Mar. 10, 2018) (describing how Attorney General Jeff Sessions’ Department of Justice rescinded twenty-five guidance documents, including ten on disability rights).

¹³⁷ *See generally* ROTHSTEIN & IRZYK, *supra* note 5, § 1:2 (discussing Section 504 and where it applies).

hospitalized would want to have an ESA with them. It is questionable whether the hospital would be required to allow such an animal because the animal is not providing a service, but only emotional support. Title II and Title III regulations under the ADA indicate that this would not be required.¹³⁸ In addition, even if an emotional support (or service) animal were allowed in a hospital setting, there would be additional questions about who would provide care for the animal in a setting where its owner cannot because of being confined to a bed.

There is not much case law in this setting.¹³⁹ The few cases in health care settings highlight the importance of individualized assessments that consider the type of risk to patients and other factors.¹⁴⁰

V. COMMON PRINCIPLES

The 2010 ADA regulations and recent case law have provided substantially more clarity on when an animal can be required or considered a reasonable accommodation in a range of settings. There are, however, some areas that would benefit from greater attention by policymakers. There are also some general principles that those who make and implement policy should consider in planning.

Institutions should take a positive and proactive approach to this issue. Waiting until an issue arises in an unexpected setting often leads to inappropriate responses and can generate bad publicity in extreme situations. Part of setting a framework is determining what are fundamental and essential aspects of the program and how an animal in a setting might affect that. Institutions should develop procedures that allow for an interactive approach to resolving concerns. This is a philosophy that is supported by courts in virtually all disability discrimination situations involving requests for accommodations.¹⁴¹

¹³⁸ 42 U.S.C. §§ 12102, 12181.

¹³⁹ See generally ROTHSTEIN & JULIA IRZYK, *supra* note 5, at Ch. 1 § 10:3.

¹⁴⁰ See *Tamara v. El Camino Hosp.*, 964 F. Supp. 2d 1077, 1079–80, 1085 (N.D. Cal. 2013) (finding that the hospital failed to demonstrate that the presence of service dogs in the psychiatric ward was a fundamental alteration of the program); *O'Connor v. Scottsdale Healthcare Corp.*, 871 F. Supp. 2d 900, 902 (D. Ariz. 2012), adhered to on reconsideration, 2012 WL 2106365 (D. Ariz. 2012), *aff'd*, 582 Fed. Appx. 695 (9th Cir. 2014) (finding that a delay in allowing a service animal and owner entrance at a hospital is not a constructive denial of access); *Roe v. Providence Health Sys. - Or.*, 655 F. Supp. 2d 1164, 1166–67 (D. Or. 2009) (finding that legitimate assistance animals should be allowed in hospitals when feasible, but not when they create a direct threat to the health of others); *Pool v. Riverside Health Services, Inc.*, No. 94–1430–PFK, 1995 WL 519129, at *3 (D. Kan. Aug. 25, 1995) (showing that an emergency room's exclusion of a guide dog was not a violation of Title III); *Albert v. Solimon*, 721 N.E.2d 17, 17 (N.Y. 1999) (finding that the examination room at a physician's office is not a public facility, and the facility is not required to accommodate the service animal); *Perino v. St. Vincent's Med. Ctr. of Staten Island*, 502 N.Y.S.2d 921, 921–23 (Sup. Ct. 1986) (finding that the exclusion of a blind person's guide dog from delivery and labor room of a hospital is allowed under state law).

¹⁴¹ See, e.g., *Equal Emp't Opportunity Comm'n v. Kohl's Dep't Stores, Inc.*, 774 F.3d 127, 131–34 (1st Cir. 2014) (finding that employer's "interactive process" in discussing

When possible, having a holistic approach and a central place for addressing these issues can be helpful. Each setting will determine what makes sense. Related to this is the importance of having training or even basic information provided to all those who might encounter someone seeking to bring an animal to a work site, public place, or another setting.

Having procedures that incorporate an interactive approach to resolving disagreements about whether an animal can be brought into a particular setting is important. In addition to training those who will be responsible for permitting animals, it is also important to have appropriate communications to individuals who might be seeking to bring animals.

VI. SUMMARY AND LOOKING FORWARD

Animals as accommodations is not a new issue, but the increase in the number and types of animals being brought to various settings has highlighted the need for those providing access to know and understand the legal requirements. While some of these requirements are relatively straightforward, others are not.

How likely is it that policy in this area will change? It is more likely that institutions will change their policies than that the federal government will change their laws or regulations. Airlines seem willing to reconsider some of their animal accommodation policies in light of the increase in the number of animals and the kinds of animals being brought onto aircrafts. Colleges and universities have developed policies, but they would benefit from greater clarity about university housing. A revisit by the DOJ regarding the regulatory reference to what consideration should be given to individuals who have phobias and allergies is needed.

As greater numbers of animals as accommodations becomes an issue, it will be increasingly important that training, communication, and holistic approaches are taken. Those entities failing to take a proactive approach risk more than litigation. In the era of cell phone videos, amateur newscasters, and social media, it is essential that these programs begin planning before the first dog bites.