ADA AUDIO Conference
ADA National Network

ADA Audio Conference Series
February 16, 2016

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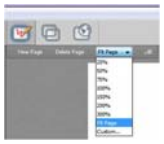

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  3. **Call** 877-232-1990 (V/TTY)

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ADA AUDIO Conference
ADA National Network

"Home, Community or Travel:
Rules for Service Animals are Not the Same"

Presenters:

- Peter Berg, Technical Assistance Coordinator, Great Lakes ADA Center
- Amanda Motyka, Equal Opportunity Specialist, U.S. Dept. of Housing and Urban Development, Chicago FHEO Center
- Livaughn Chapman, Jr. Chief, Aviation Civil Rights Compliance Branch Office of the General Counsel, U.S. Department of Transportation
- Anne Hammond, Transportation Industry Consultant, U.S. Department of Transportation

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Laws to be Discussed

- Americans with Disabilities Act (ADA)
- Rehabilitation Act (Section 504)
- Individuals with Disabilities Education Act (IDEA)
- Fair Housing Act (FHA)
- Air Carriers Access Act (ACAA)

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Americans with Disabilities Act (ADA)

- Department of Justice regulations
  - Title II Section 35.136
  - Title III Section 36.302

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Definition of "Service Animal" Overview

- Definition can be found in § 35.104 in Title II and § 36.104 in Title III.
- The definition:
  - limits the species of service animals to **dogs**;
    - Miniature Horse Exception
  - makes clear that comfort or emotional support animals are **not** covered; and
    - Continue to be covered under Fair Housing and Air Carrier Access Act
  - makes clear that individuals with physical, sensory, psychiatric, or other mental disabilities can use service animals.

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Definition of Service Animal

Service animals are defined as:

- Dogs that are individually trained to do work or perform tasks for people with disabilities
- Examples of such work or tasks include:
- Guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties
- Service animals are working animals, not pets
- The work or task a dog has been trained to provide must be directly related to the person's disability

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General Service Animal Provisions

- Service animal provisions are found in § 35.136 in Title II and § 36.302 in Title III.
- Overview:
  - Provides when a service animal can be excluded.
  - Requires animal to be under individual's control.
  - Care and supervision.
  - Provides guidance on inquiries.
  - Access to all areas open to public.
  - Surcharges.

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Rules regarding "exclusion" of Service Animals

- General rule is that covered entities must permit service animals.
  - The revised rules, however, add two specific exceptions for when service animals can be excluded:
    - The animal is out of control and the individual does not take effective action to control it; or
    - The animal is not housebroken.
- The individual should be given the opportunity to participate without the animal.

15

"Under Handler's Control"

- Must have harness, leash, or other tether
- If individual is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks, then the animal must otherwise be under the individual's control (i.e., voice control, signals, or other effective means.)

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Permissible Inquiries

- Only two inquiries may be made by covered entities:
  - Whether the animal is required because of a disability; and
  - What work or task the animal has been trained to perform.
  - Generally, inquiries may not be made when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.

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Miscellaneous Provisions

- Covered entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany individual's to areas of a public accommodation or public entity.
- Covered entities may not require people with disabilities to pay pet fees or surcharges that are not applicable to individuals without pets.

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Miniature Horse Exception

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Miniature Horses

- Rules require reasonable modifications to permit a miniature horse that has been individually trained to do work or perform tasks.
- Rules provide assessment factors to assist entities in determining whether reasonable modifications can be made.

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Miniature Horse Assessment Factors

- The type, size, and weight of the horse and whether the facility can accommodate those features
- Handler has sufficient control of the horse
- Horse must be housebroken
- Whether the horse's presence in a specific facility compromises legitimate safety requirements

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Requirements for Miniature Horses

- Sections 35.136(c)-(h)'s and § 36.302(c)(3)-(8)'s service animal requirements also apply to miniature horses.
  - Admit PWD even if animal is properly excluded
  - Care and supervision
  - Inquiries
  - Access to all public areas
  - Surcharges

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Service Animals and Employment

- Service Animal as a Reasonable Accommodation - Covered employers are required to provide reasonable accommodations when needed to provide:
  - equal access to application process
  - allow qualified employee to perform essential functions, or
  - to afford equal access to any benefits associated with position
- Service Animal not limited to definition used under Title II and III
  - Emotional and companion animals MAY be considered accommodations under Title I

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Employment and Service Animals

- Documentation - Employer has right to documentation regarding the need for a service animal and how the use of a service animal relates to performing the essential job functions
- Employer is not responsible for the care and/or supervision of the service animal

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Federal Transit Administration – Service Animals

- No changes to U.S. Department of Transportation (DOT) ADA regulations regarding service animals in light of revised Title II and III regulations
- DOT ADA regulations cover both public and private transportation providers
- DOT would announce any changes in their rules and provide for a public comment period

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DOT Definition of Service Animal

- Service animal means:
  - Any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to:
    - guiding individuals with impaired vision
    - alerting individuals with impaired hearing to intruders or sounds,
    - providing minimal protection or rescue work,
    - pulling a wheelchair,
    - or fetching dropped items

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Service Animals at Places of Education

- IDEA- K-12
  - Student may require the assistance of a service animal in the classroom
    - Consider inclusion of the need for service animal in Individual Education Plan (IEP)
- ADA/504- Post-secondary setting
  - Student may require the assistance of a service animal in order to access programs, activities or services
  - Fair Housing Act- post-secondary housing
  - Applies to university/college housing including dormitories
  - Assistance animals

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Post-Secondary

- Post-secondary educational Institution
- Limited to 2 questions if it is service animal under ADA
- May require documentation establishing student has disability and disability related need for assistance animal in housing situations
- Not responsible for the care and/or supervision of the animal
- May create voluntary registry

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Assistance Animals

Amanda Motyka
Equal Opportunity Specialist

U.S. Department of Housing and Urban Development
Fair Housing and Equal Opportunity

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Reasonable Accommodation

- Reasonable Accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.
- To show that the requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

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Reasonable Accommodation

The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

Example: The policy of a housing provider requires tenants to come to the office to pay their rent.

A tenant with a mental disability makes her afraid to leave her unit. She requests that she be allowed to have a friend mail her payment to the office as an accommodation.

The request for this type of accommodation is reasonable and must be granted.

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Defining Assistance Animals

Service Animals

- Defining Service Animals
- Instances where you might see the use of service animals
  - Persons with physical disabilities
  - Examples:
    - Visually impaired persons
    - Persons utilizing a wheelchair

Emotional Support

- Defining Emotional Support/Companion Animals
- Instances where you might see the use of emotional support/companion animals
  - Persons with mental disabilities
    - Persons suffering from depression
    - Persons suffering from anxiety

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Three Statues that Govern the Use of Assistance Animals in Housing, Public Accommodations and HUD Funded Programs

- The Fair Housing Act (FHA)
- Section 504 of the Rehabilitation Act (Section 504)
- The Americans with Disabilities Act (ADA)

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Take a look at these pictures

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The FHA and Section 504 of the Rehabilitation Act states that an "Assistance Animal"

- Provides support, assistance or service
- Includes emotional support or therapy animals
- Is not only a dog – Examples: cat, bird, guinea pig, miniature horse, rabbits, monkey, etc.
- Not required to be individually trained or certified
- No breed, weight, or size restriction

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- The terms Assistance Animal and Service Animal are NOT used interchangeably for the sake of the law
- What is clear, however, is that we NEVER refer to an Assistance Animal or a Service Animal as a PET.
- Assistance animals are NOT considered PETS under the law.

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Who is eligible to have an assistance animal?

- Individuals with a disability
- Individuals who have a person(s) residing with them that have a disability
- Or a person who visits a resident that has a disability

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Definition of Disability

- Individuals with a physical or mental impairment that substantially limits one or more major life activities
- Individuals who are regarded or perceived as having such an impairment
- Individuals with a record of such an impairment

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Definition of Major Life Activity

- Those activities that are of central importance to daily life, such as vision, hearing, walking, sleeping, breathing, learning, speaking, performing manual tasks and caring for one's self.
- This list is NOT exhaustive!

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FHA - Promulgated in 1968

- Covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions
- Requirements apply regardless of the presence of Federal financial assistance
- Prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability

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FHA continued…

- Includes provisions for reasonable accommodations and modifications (no 'magic words' required for request)
- Makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling
- Prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations

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Housing providers may have assistance animal rules as long as they're no more restrictive than any pet rules at the same property.

Now, as with any other accommodation / modification request, the disability-animal request must, too, be "reasonable" and the resident is responsible for their animal.

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Section 504 - Promulgated in 1973

- Covers housing providers that receive federal financial assistance from HUD
- Recipients must permit qualified individuals with disabilities to participate in and benefit from the housing aid, benefit or service
- Recipients must administer programs using criteria and methods which result in equal participation of individuals with disabilities

45

ADA - Promulgated in 1990

- Requires individual to have a disability
- Animal must meet Service Animal definition
- Requires reasonable accommodation if criteria are met

ADA Title II: applies to housing operated by state and local governments and is similar to Section 504, including public housing agencies, state and local government provided housing, and housing at state universities and other places of education.

ADA Title III: applies to places that serve the general public, including rental offices, shelters, some types of multifamily housing, and assisted living facilities but does not include housing itself.

46

The definition of "service animal" contained in ADA regulations does not limit housing providers' obligations to grant reasonable accommodation requests for assistance animals in housing under either FHA or Section 504.

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Joint Statement DOJ and HUD - May 17, 2004

- Provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act
- Provides additional information regarding housing providers' obligations to provide reasonable accommodations
- Contains real world scenarios to assist you in responding to resident questions
- DOJ has also published a fact sheet on service animals and the ADA

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FHEO Notice – 2013-01 – published April 25, 2013

- Explains reasonable accommodation obligations regarding assistance animals for people with disabilities under three laws: the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA)

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Rules, policies or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when:

- Its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling
- Or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving HUD assistance

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Maximum Number of Animals Case

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Anita Moore v. Village of Constantine

Ms. Moore is a person with a disability. The nature of Ms. Moore's disability is severe. Specifically, she has a condition which will progressively strip her of her complete ability to move, leaving her immobile. Ms. Moore also suffers from depression due to the prognosis. Ms. Moore alleged that using her limbs as often as possible slows down the progression of her disease, thus allowing her more time to enjoy mobility. As result, Ms. Moore maintained over 100 rabbits in the backyard of her home.

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Anita Moore v. Village of Constantine Cont.

The Village of Constantine (*hereinafter*, the Village) became aware of Ms. Moore's rabbits and sent her notice that she was in violation of its zoning ordinance which precluded her from having more than two (2) animals over the age of six (6) months. Ms. Moore provided the Village with her doctor's note indicating her need for the requested accommodation.

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What if the Village of Constantine was a HUD funded Grantee?

54

Analysis of how the Village should have handled the case

- Ms. Moore maintains 100 rabbits in her backyard
- Neighbor complains to the Village
- The Village sends Ms. Moore notice that she is in violation of the local Ordinance
- Ms. Moore states that she is a person with a disability and needs all 100 of the animals as an accommodation

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Analysis of how the Village should have handled the case cont.

- *The Village engages in the interactive process with Ms. Moore*
  - *Asks for a Doctor's note*
  - *Asks about alternatives, i.e. less than 100, a bird, a dog etc.*

56

The Village calls you about Ms. Moore's concerns in an attempt to comply with their duty to affirmatively further fair housing. Based on the analysis we just went through what would you tell the village?

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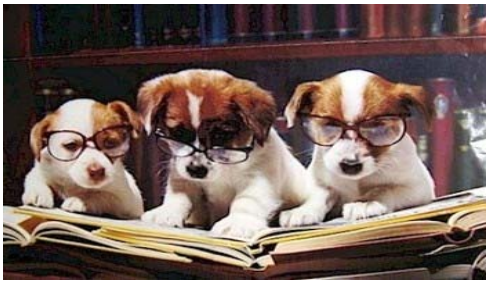
All Ended Well in Constantine

58

The Pet Policy Applies to All or Does It?



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Mary Hilmes v. Tallgrass Condominium Association

Ms. Hilmes' daughter Jessica is a person with a disability. Specifically, Jessica suffers from anxiety. Ms. Hilmes has resided in her condo for 10 years and maintains two (2) pets. Jessica, along with her emotional support dog, moved in with her mother in 2012. The association has a two (2) pet maximum policy outlined in their "pet policy." The association is informed of the, now, three (3) dogs in Ms. Hilmes' unit and writes her a warning ordering removal of one of the dogs; the association sites its "pet policy."

60

Mary Hilmes v. Tallgrass Condominium Association

Upon receipt of the warning Ms. Hilmes writes to the association stating "my daughter requires the emotional support her dog provides her." Thereafter, Ms. Hilmes maintains all three (3) dogs, prompting the association to issue her a violation and assessment of a $50 fee for each day she remains in violation of the "pet policy."

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Analysis of how the Apartment should have handled the case:

- Ms. Hilmes indicates that her daughter is a person with a disability and requires the assistance of an emotional support dog
- The association engages in the interactive process with Ms. Hilmes using an "accommodation policy" rather than a "pet policy"
  - Asks for a Doctor's note, Asks about alternatives, i.e. a bird, a cat etc.
- Ms. Hilmes provides a note from her Doctor which states the benefit from maintaining the dog
- The accommodation is granted

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Analysis of how the Apartment should have handled the case:

- Here's where it gets gray:
  - ✓ The Apartment community is right in stating that the note does not state a "need" for the animal, and instead only states that her daughter would be "benefited.' In this case I simply asked Ms. Hilmes to obtain a note from her Doctor using the word "need" and she did.

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The ED calls you and asks what it should do about Ms. Hilmes' third animal. Based on the analysis we just looked at, what would you tell the ED to do?

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Oh Happy Day, All Three Can Stay!!!!

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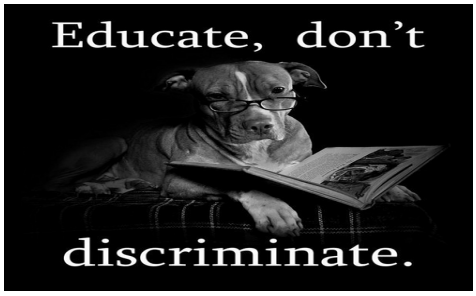
Breed Restriction Case



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Gonzalez, Raelynn v. Brooklyn Park 73rd Leased Housing Association

Ms. Gonzalez is a person with disabilities who requires a companion animal. Specifically, Ms. Gonzales has several mental disabilities that make it necessary for her to live with a companion animal, a "pit bull." The association had a "restricted breed" pet policy which prohibited "pit bulls." The association issued Ms. Gonzalez notices of her violation of the "restricted breed" policy and demanded she remove the pit bull.

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Gonzalez, Raelynn v. Brooklyn Park 73rd Leased Housing Association

Ms. Gonzales requested to keep her dog, and informed the association that he was her companion animal. The association denied her request because her companion animal was on the restricted breed list. Ms. Gonzalez provided the association with documentation verifying her disabilities and need for her companion animal.

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Gonzalez, Raelynn v. Brooklyn Park 73rd Leased Housing Association

In this case, unlike those we have seen before, the association insisted on an interactive process that involved interviewing Ms. Gonzalez's Psychologist and even threatened that if she did not allow her psychologist to be interviewed, an eviction action would be filed against her for breaching her lease. The association then required her to purchase an insurance policy for her companion animal, naming the association as the co-insured. The association also required that she make her companion animal wear a vest at all times outside of her unit and that she sign an indemnification agreement holding the association harmless for any damage or harm caused by her companion animal.

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Gonzalez, Raelynn v. Brooklyn Park 73rd Leased Housing Association

After Ms. Gonzalez complied with all of the associations' conditions for keeping her companion animal, the association issued a notice of non-renewal of her lease and required her to move out by November 30, 2013. Ms. Gonzalez was forced to move out of her apartment, because she had a pit bull, an animal on the "restricted breed" list.

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Items for Discussion

- The association's use of the "Pet Policy" for assistance animals
- The association's "breed restriction" for assistance animals
- The association's demand for an interview with Ms. Gonzalez's Psychiatrist
  - Taking the interactive process too far

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Items for Discussion Cont.

- The association's requirement for Ms. Gonzalez to purchase an insurance policy for her companion animal, naming the association as the co-insured
- The association's requirement that Ms. Gonzalez make her companion animal wear a vest at all times outside of her unit and that she sign an indemnification agreement holding the association harmless for any damage or harm caused by her companion animal
- The association's refusal to renew Ms. Gonzalez's lease even after she complied with all of their unlawful demands

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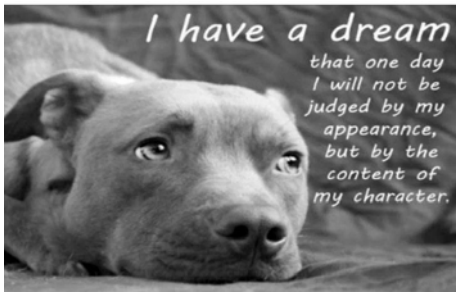
This is What We, at FHEO, call a CAUSE CASE!!!



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The US Department of Transportation
Aviation Enforcement and Proceedings

Presented To:
ADA Audio Conference
February 16, 2016

Presented By:
Livaughn Chapman, Chief - Civil Rights Compliance Branch
Anne Hammond, Team Leader – Disability Issues
U.S. Department of Transportation

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Presentation Overview

- Office Structure and Jurisdiction
- ACAA Overview and History
- Top 5 Disability Complaints to DOT
- ADA vs. ACAA Service Animal Definition
- Traveling with a Service Animal
- Emotional Support and Psychiatric Service Animals – Documentation
- Unusual Service Animals
- Rulemaking
- Resources and Guidance Information

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Office Structure

One of seven offices in the Office of the Secretary's Office of the General Counsel

Two divisions:

- Office of Aviation Enforcement and Proceedings (C-70)
- Aviation Consumer Protection Division (C-75)

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Jurisdiction

US Department of Homeland Security
•Transportation Security Administration
- Aviation Security
- Training for TSA Agents

US Department of Transportation
•Federal Aviation Administration
- Aviation Safety and Efficiency
- Airport Accessibility (Office of Civil Rights)

•Office of Aviation Enforcement and Proceedings
- Consumer Protection
- Civil Rights
- Economic Licensing

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Air Carrier Access Act (ACAA)

ACAA, 49 U.S.C. § 41705, prohibits discrimination against air travelers with disabilities.

ACAA also states that the Secretary of Transportation shall:

- ✓ Investigate each complaint alleging discrimination on the basis of disability
- ✓ Publish disability-related complaint data
- ✓ Review all disability-related complaints received by air carriers and report annually to Congress
- ✓ Implement a plan to provide technical assistance

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History of the Air Carrier Access Act (ACAA)

1986: ACAA passed

Mar 1990: Rule implementing ACAA (14 CFR Part 382) issued

April 2000: Extension of ACAA to foreign carriers

May 2000: Guidance Notice to Foreign Carriers Regarding ACAA and 14 CFR Part 382

Nov 2004: NPRM proposing extension of part 382 to foreign carriers

May 2008: Final rule amending ACAA rule to apply to foreign carriers

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Who is covered?

U.S. Carriers

- All operations and aircraft.

Foreign Carriers

- Flights that begin or end at a U.S. airport and for aircraft used on those flights.

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Top 5 DOT Disability Complaint Categories

Year	Total DOT Disability Com-plaints	Percentage of Total DOT Complaints	Failure to provide adequate or timely assistance – wheelchair	Failure to provide adequate or timely assistance – other	Assistive Device-storage, loss, delay, and damage	Seating Accommo-dations	Service Animal Problem
2015	941	4.6	332 (35%)	124 (13%)	125 (13%)	103 (11%)	99 (11%)
2014	777	5.0	263 (34%)	118 (15%)	107 (14%)	89 (11%)	50 (6%)
2013	683	4.4	249 (36%)	102 (15%)	101(15%)	76 (11%)	45 (7%)
2012	708	4.6	248 (35%)	92 (13%)	81 (11%)	123 (17%)	51 (7%)
2011	630	5.5	221 (35%)	66 (10%)	70 (11%)	88 (14%)	50 (8%)
2010	572	5.2	206 (36%)	75 (13%)	61 (11%)	71 (12%)	33 (6%)

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ACAA Service Animal Definition

- 1996: Any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.
- 2003: Added to definition ***animals*** that assist person with disabilities by providing emotional support.

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Traveling with a Service Animal

- ***Carriers must permit a service animal to accompany a passenger with a disability.***
  - ✓ Service animal must be allowed to sit at same seat with passenger. But cannot obstruct an aisle.
  - ✓ As evidence, carrier must accept ID cards, other written documentation, presence of a harness or tag or credible verbal assurance of passenger.
  - ✓ Emotional support or psychiatric service animals: Carrier may require medical documentation.

Foreign carriers *– must allow service dogs only on flights to and from the U.S.*

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Documentation for Emotional Support or Psychiatric Service Animals

- ***Carriers may require documentation stating***:
- ✓ Passenger has a mental or emotional disability recognized in the DSM
- ✓ Passenger needs animal for accommodation on flight or at destination
- ✓ The individual providing assessment is a licensed mental health professional and passenger is under his or her medical care
- ✓ The date/type of professional's license and jurisdiction in which it was issued
- *Document should be issued less than one year from the date of the passenger's initial scheduled flight*

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Unusual Service Animals

- Carriers are *not required* to accommodate certain unusual service animals (*e.g., snakes, other reptiles, ferrets, rodents, and spiders*) in the cabin
- Other unusual animals presented as service animals: carriers determine whether any factors preclude travel in cabin (*e.g., animal too large or heavy; poses a direct threat to health or safety of others; causes a significant disruption in cabin service; prohibited from entering foreign country*)

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Rulemaking

Exploring the Feasibility of Negotiated Rulemaking

✓Definition of service animal

✓Safeguards against passengers falsely claiming that a pet is a service animal

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Resources for Part 382 and Guidance Information

- Website: http://www.transportation.gov/airconsumer; click on "Topics;" Click on "Disability"
  - ✓Includes copies of Part 382, FAQs, recent orders and guidance documents.
  - ✓Plane Talk: Passengers with Disabilities
    - (http://www.transportation.gov/airconsumer/planetalk)
  - ✓New Horizons
    - (http://www.transportation.gov/airconsumer/new-horizons-information-air-traveler-disability)

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Resources For Part 382 and Guidance Information (cont.)

- Website: "How can we help you?"
  - ✓Includes information on how to file a complaint
  - ✓Includes Travel Tips and Publications
- Disability Hotline: 1-800-778-4838 (voice)
  1-800-455-9880 (TTY)

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Questions?

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ADA National Network

Thank you for participating in today's ADA-Audio Conference Session

The next scheduled session is:

Tuesday, March 15, 2016

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