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Accommodating the Rise of Emotional Support Animals on Campus

An Issue Brief for Campus Leaders

3 Ways to Use This Issue Brief

- Understand how emotional support animals differ from service animals.
- Educate other campus constituents about the legal complexities of emotional support animals and challenges for colleges and universities.
- Identify next steps for managing emotional support animals on your campus.

The Rise of Emotional Support Animals on Campus

Institutions Grapple with Sharp Increases in Accommodation Requests

Campuses are seeing a rise in accommodation requests of all kinds. One of the most notable of these is housing accommodation requests for Emotional Support Animals (ESAs), also commonly called assistance, companion, or comfort animals. ESAs broadly refer to animals who provide their caretakers with comfort and relief from the impacts of mental health disabilities by virtue of the animal's nature and presence, without specialized training. The Fair Housing Act defines and protects ESAs as a reasonable housing accommodation, including within campus housing environments.

When EAB first examined this issue in 2013, our research found that requests for ESA accommodations were rare. In 2019, of the 66 student affairs leaders who responded to EAB's survey on ESA accommodations, **98 percent of administrators have seen a slight or significant increase in the number of ESA requests in the past five years.** No respondents indicated that the volume of these requests has stayed the same or slightly decreased.

What Is Driving the Increase in ESA Accommodation Requests?

A number of factors are likely at play, but three rise to the top when considering ESAs on campus:

Rising Student Distress



Today's adolescents are experiencing **higher rates of anxiety, depression, and other mental health concerns.** The increase in ESAs may be tied to the elevated rates of mental health disorders found in students in the K-12 pipeline.

"Fee-for-Forms" Market



Google "emotional support animals" and you'll easily find **websites offering "official" ESA verification letters for purchase.** These letters come from real, licensed mental health professionals, prompting an ethics debate within that community.

Media Coverage



Media coverage of ESAs has exploded in recent years, perhaps fueled by the proliferation of animals in pet-free places. Most of this coverage of disastrous or absurd animal encounters **highlights just how easy it is to buy an ESA "prescription" online.**

How Can Campuses Cope?

The complexities of ESAs require a unified institutional approach, robust policies, and clear processes to manage their impact on the campus environment. Without this infrastructure, institutions are vulnerable to legal action when a request for accommodation is mishandled, risk wasting staff time and resources on unsubstantiated accommodations, and make it more difficult for those with substantiated needs to thrive on campus.

Source: National Institute of Mental Health, "Mental Health Information: Statistics," 2019; Herzog, Hal, "Emotional Support Animals: The Therapist's Dilemma," *Psychology Today*, July 19, 2016; Marx, Patricia, "Pets Allowed," *The New Yorker*, Oct. 13, 2014; EAB interviews and analysis.

Clinical and Legal Ambiguity Fuels Complexity

A Questionable Online ESA Certification Industry Flourishes in the Gray Area

While institutions increasingly recognize the immediate need for clear policies and processes, the path forward on ESAs is complicated by three factors:

1 Psychological Research on ESAs is Inconclusive...

Surprisingly little empirical research exists on the efficacy of ESAs as treatment for psychological disorders. The few studies that exist have been criticized by psychological researchers for small sample sizes and poor design, rendering the data inconclusive. Researchers and professional associations have called for more research on ESAs to understand their treatment value, as well as ethical guidelines for how and who should be verifying a patient's need for an ESA.

2 ...But Clinical ESA Verification is Only a Click Away

Anyone with an internet connection and a credit card can purchase an ESA verification letter from a licensed clinical provider. After the purchaser completes a perfunctory virtual "consult," the provider will issue a signed letter certifying their disability-related need for an ESA. People can also pay to "register" their animal in an "official" emotional support animal database, which may come with official-looking accessories like a [registration certificate](#), [ESA-branded harness, vest, or patches](#), none of which convey any formal meaning or legal protections.



Rate at which **ESA "registrations" increased between 2011-2013** with a company that sells branded vests and certificates.

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“...[We] see around **10 letters each year** from the same therapist based in Hawaii,...if the person grew up in Idaho it's, like, 'hmmm,' **help me understand this therapeutic relationship.**”

Meredith Goodwin, Director of the Access Center
WASHINGTON STATE UNIVERSITY

”

The indiscriminate nature of these online providers has raised reasonable concerns about people purchasing a letter online to pass off a pet as an ESA to circumvent no-pet rules. However some disability advocates caution that people with real disability-related needs may be turning to these services for documentation because they appear legitimate. At college and university disability centers, administrators have created “ESA Watchlists” to track and share the names of suspicious licensed providers possibly connected to these “fee-for-form” websites.

3 Fraud Concerns Prompt State and Federal Intervention, Creating a Fluid Legal Landscape

Legislators in more than a dozen states have introduced ESA laws in attempts to do everything from curb online fraud to punish those who misrepresent pets as ESAs or service animals. At the federal level, new Fair Housing Act guidance on ESAs from the U.S. Department of Housing and Urban Development has been rumored since 2018, but remains illusive.

Source: Buchwald, Elisabeth, "There's been a spike in university 'enrollments' of emotional support animals," *Marketwatch*, June 25, 2018; Cohen, Rachel, "A federal civil rights office wants to limit access to emotional-support animals that can help with depression," *The Intercept*, March 18, 2019; Hoffman, Jan, "Campuses Debate Rising Demands for 'Comfort Animals,'" *The New York Times*, Oct 5, 2015; Younggren, J. N., Boisvert, J. A., & Boness, C. L. (2016). Examining emotional support animals and role conflicts in professional psychology. *Professional Psychology: Research and Practice*, 47(4), 255-260; EAB interviews and analysis.

How Does an ESA Differ from a Service Animal?

Distinctions in Functions, Training Expectations, and Laws

Administrators cite confusion over the differences between ESAs and service animals as another barrier to a unified campus approach to ESA policies and procedures. Three core differences distinguish ESAs from service animals: level of training necessary for role, permissible species, and relevant federal laws and regulations. The below chart summarizes these key differences and relevant federal guidelines.

Key Differences Between ESAs and Services Animals

	Emotional Support Animals	Service Animals
Animal Species	Any; subject to local regulations	Dogs and some miniature horses
Laws and Regulations	<ul style="list-style-type: none"> Fair Housing Act/Section 504 Air Carrier Access Act Additional local regulation varies² 	<ul style="list-style-type: none"> Americans with Disabilities Act (ADA)¹ Fair Housing Act/Section 504 Air Carrier Access Act Additional local regulation varies²
Scope of Access Provided by Law	<p>In private residences/dwellings, including pet-free residences, provided the animal does not provide “a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation” or if the animal in question would cause “substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.” ESAs are exempt from pet fees (such as those commonly found in apartment complexes).</p> <p>On airplanes, provided the passenger produces sufficient documentation and follows airline rules/procedures. Airlines can deny animals that are too large or heavy to be accommodated in the cabin, pose a direct threat to the health or safety of others, cause a significant disruption of cabin service, or are prohibited from entering a foreign country.</p>	<p>Anywhere with their handler, including places of public access, provided the animal does not “fundamentally alter” the nature of the goods, services, programs, or activities provided to the public. Service animals are permitted in pet-free residences dwellings and are exempt from pet fees (such as those commonly found in apartment complexes).</p>
Training Required	<p>None required.</p> <p>By virtue of their very nature or presence ESAs relieve their handler’s disability-related symptoms.</p>	<p>Must be trained (by individual or organization) to do work or perform tasks for someone with a disability that are directly related to the individual’s disability.</p>
Proof of Animal Status	<p>No certifying body/registration required. Some state and local laws require identifying harnesses, vests, or other gear, so consult your local laws on this issue.</p>	<p>No certifying body/registration required. Some state and local laws require identifying harnesses, vests, or other gear, so consult your local laws on this issue.</p>
Allowed Means of Certifying Need	<p>Housing providers may ask for verification from a “reliable” third party certifying that the person has a mental disability and receives therapeutic relief/benefits from ESA as part of the treatment or management of their disability. Examples of qualifying third parties include a therapist, psychologist/psychiatrist, social worker, rehabilitation counselor, physician, or support group.</p> <p>Similarly, airlines may request documentation valid within one year of the travel date from a passenger’s treating mental health professional.</p>	<p>If a service animal’s function is not obvious (e.g., not clearly providing assistance for a person who is blind or uses a wheelchair or other mobility device), two specific questions are allowed:</p> <ol style="list-style-type: none"> Is the dog/mini horse a service animal required because of a disability? What work or task(s) has the dog/mini horse been trained to perform? <p>DO NOT ASK FOR: Documentation for the animal, the animal to demonstrate tasks, information about the person’s disability.</p>

1) In 2010, the Justice Department amended the Americans with Disabilities Act to tighten the definition of service animals to exclude emotional support animals. Therefore, there are *no protections* for emotional support animals conveyed by the Americans with Disabilities Act.

2) [Michigan State University’s Animal Legal & Historical Center](#) tracks animal-related laws in U.S. states and territories and is a trustworthy resource of relevant local service animal and ESA regulations: Visit www.animallaw.info for more.

Source: US Department of Housing and Urban Development, *Memo on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, April 25, 2013; US Department of Justice, *Frequently Asked Questions about Service Animals and the ADA*, n.d.; Stockman, Farrah, “People Are Taking Emotional Support Animals Everywhere. States Are Cracking Down.” *The New York Times*, June 18, 2019; EAB interviews and analysis.

Understanding Institutions' Rights and Obligations

Case Law Offers Guidance on How Institutions Can Set and Enforce ESA Policies

The 2015 case of the *United States V. the University of Nebraska at Kearney (UNK)* offers insight on institutions' rights and obligations when accommodating ESAs in campus housing. As part of the settlement of the discrimination suit filed against UNK by the U.S. Department of Justice, the university submitted revised housing accommodation and ESA policies. These DOJ-vetted policies offer a template on which institutions can base their own policies and procedures. The precedents set by UNK's policy have been replicated by a number of institutions, including in discrimination suit settlements as recently as 2018.

Key Precedents Established by UNK Court Order

- 1 Colleges and universities are **entitled to documentation from a "reliable" third-party** to verify an individual's disability-related need for an emotional support animal.
- 2 Institutions can use a framework of **seven factors to evaluate if the presence of the animal in campus housing is unreasonable**.
 - ✓ The animal is **too large** for the assigned housing space.
 - ✓ The animal's presence would **force others from assigned housing** (because of allergies or another documented condition).
 - ✓ The animal is **too loud** and would disturb others' right to peaceful enjoyment of their housing.
 - ✓ If the animal is **not house broken** or their waste management is otherwise unreasonable.
 - ✓ The animal's **vaccinations are not up-to-date**.
 - ✓ The specific animal **poses, or has in the past, a direct threat** to the individual or others.
 - ✓ The animal **causes or has caused excessive damage to housing**, beyond reasonable wear and tear
- 3 Individuals with emotional support animals are **only entitled to have their animal in their assigned dwelling space**, not in common areas of the campus residential housing facility or elsewhere on campus.
- 4 Individuals with emotional support animals must **fulfill responsibilities relating to animal care and management**, including maintaining animal and dwelling hygiene, refraining from leaving their animal in others' care or in their dwelling alone overnight, and more.
- 5 **Acknowledgement that university housing has several "unique" characteristics** that distinguish it from more typical dwellings like condominiums or apartments, and therefore are allowed unique considerations when executing their obligations on animal accommodations in on-campus housing.

Source: U.S. Department of Justice, *Consent Order in Case No. 4:11CV3209 United States of America v. University of Nebraska at Kearney and Board of Regents of University of Nebraska*, filed Sept 3, 2015; U.S. Department of Justice, *Consent Order in Case No. 5:14-cv-1992-JRA United States of America v. Kent State University, Kent State University Board of Trustees, Jill Church, Elizabeth Joseph, Brian Hellwig, and Amy Quillin*, filed Jan 4, 2016; Masinter, Michael, *Justice Department settlement gives new power to campuses over emotional support animals*, *Disability Compliance for Higher Education*, 21:1, 3-3, July 16, 2015; EAB interviews and analysis.

Where Do We Go from Here?

What Should Be on Every College and University's To-Do List

Institutions can expect to see requests for emotional support animal accommodations continue to increase as student distress continues to rise, the online market remains unchecked, and public confusion around ESAs sustains. Clinical verification for ESAs is sure to continue while research into efficacy is ongoing. The legal landscape will remain fluid as federal administrators weigh new guidance around housing provider's obligations under the FHA, how they apply to different types of housing, and explore how to curb fraudulent aspects of the online gray market without punishing those with legitimate needs.

Despite underlying uncertainty, there are five priorities that should be on every institution's to-do list to navigate this issue on campus. To help navigate these to-dos, download EAB's ESA policy essentials and process infographic from [EAB.com](https://eab.com).

ESA To-Do List for Campus Leaders

- 1 Define and communicate a policy** for emotional support animals, ideally one that is distinct from a service animal policy.
- 2 Unify around an approach** for determining the reliability of the third party validating a student's disability-related need for an emotional support animal.
- 3 Design an application and appeal process** that efficiently and reasonably solicits the information you need to determine the reasonableness of the accommodation request.
- 4 Articulate and communicate the responsibilities and expectations** of students with emotional support animal accommodations.
- 5 Define the post-accommodation approval process** and logistics for both campus and the student.

Reading List

Where to Start for More about ESAs on Campus

ESA Essentials

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Treatment Efficacy and Prescription Ethics

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Free pre-publication version available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5127627/>.

Case Law

Consent Order in *United States vs. University of Nebraska at Kearney*, filed 3 September 2015: <https://www.justice.gov/opa/file/767276/download>.

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Masinter, Michael R. "Justice Department Settlement Gives New Power to Campuses over Emotional Support Animals." *Disability Compliance for Higher Education* Vol. 21, no. 5 (18 November 2015). Submission version available at: https://works.bepress.com/michael_masinter/2/.

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