



#### **Who Should Read**

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Chief Student Affairs Officer  
General Counsel  
Head of Disability Services  
Head of Residence Life and Housing  
ADA/EEO Officers

# Essential Elements for Your ESA Policy

EAB's Emotional Support Animal Policy Template

## **2 Ways to Use This Policy Template**

- **Create an ESA policy:** use our policy template as input into your policy development process.
- **Update an existing policy:** audit it for concepts found in ESA case law policies.

# How to Use EAB's Policy Template

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## Develop, Audit, or Update Your Emotional Support Animal Policy

Colleges and universities are facing rising requests for Emotional Support Animal (ESA) accommodations. To negotiate this challenge, institutions must establish policies that clearly outline both the institution's and the student's rights and responsibilities. EAB reviewed ESA practices at more than 100 institutions and found that most schools lack independent or comprehensive ESA policies, or have not updated their policies to reflect recent case law. As the number of ESA accommodation requests continues to increase, institutions must articulate comprehensive policies to reduce their legal exposure and ensure staff time and resources are optimized towards helping students with substantiated needs.

To help institutions fast-track their policy development or review process, EAB developed this ESA policy template. In it, we've incorporated essential lessons learned from 100+ reviewed practices and the U.S. Department of Justice-vetted policies established in settlements from the cases of [University of Nebraska at Kearney](#) (UNK, 2015), [Kent State University](#) (KSU, 2016), and [Notre Dame de Namur University](#) (NDNU, 2018).

### Using This Policy Recommendation

There are two ways to use EAB's ESA policy recommendation:

1. **Create an ESA policy:** Use our policy template as input into your policy development process. Combine with EAB's ESA Issue Brief to educate and inform discussion with recommended campus partners as you craft your institution's policies and practices.
2. **Audit and update an existing ESA policy:** If your existing policy pre-dates the 2015 UNK settlement or did not consider available case law during initial development, EAB recommends revisiting your policy to ensure it is consistent with available legal precedent. Use EAB's template to inform your assessment and update your policy.

#### **This Policy Recommendation Is Not Legal Advice**

It is essential to consult your institution's general counsel *throughout* this process and *prior* to publishing your ESA policy.

### Who to Involve

We recommend you engage these campus partners in developing or revising your ESA policy:

- Chief Student Affairs Officer
- General Counsel
- Director of Disability/Accessibility Services
- Director of Residence Life and Housing
- ADA, Section 504, and/or Equal Educational Opportunity Coordinator/Office
- Counseling and Psychological Services
- Housing Facilities Director/Manager

For each individual or office you involve, define their role in the policy development process to ensure clarity around who provides the recommendations, who provides input or comments on the recommendations, who needs to agree on the policy, and who has final sign-off authority.

# EAB's ESA Policy Template

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## Emotional Support Animal Policy and Agreement

EAB University

*Last updated 7/11/2019*

EAB University ('EAB U' or the 'University') is committed to ensuring equal access, as defined by federal, state, and local law, to programs, services, and facilities for qualified individuals with disabilities. EAB U will grant a reasonable accommodation - which may include a change or exception to its rules, policies, practices, services, or facilities - that is needed because of an individual's disability.

It is EAB U's general policy to provide reasonable accommodations to individuals with disabilities whenever an individual has a disability and there is a disability-related need for the requested accommodation. A disability-related need for a requested accommodation exists when there is an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

EAB U recognizes the importance of an "Assistance Animal," as defined by the Fair Housing Act (FHA), for individuals with verified disabilities to use and enjoy University housing. An Assistance Animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. The FHA definition of Assistance Animal broadly includes two categories of animals:

1. **Service Animals:** Defined by the Americans with Disabilities Act Amendments Act (ADAAA) as dogs, and in some cases miniature horses, that are individually trained to do work or perform tasks for people with disabilities that is directly related to the person's disability.
2. **Emotional Support Animals (ESA):** Animals who provide emotional support, well-being, comfort, or companionship that alleviates one or more of the disability-related impacts of a person's verified disability. ESAs may be trained, but do not require individualized training.

This Policy explains the specific requirements applicable to an individual's use of an Emotional Support Animal in EAB U housing. An approved ESA is not allowed in any University facilities other than the privately assigned individual living accommodations within EAB U residential facilities to which the individual is assigned, except to the extent the individual is taking the animal out for natural relief.

This Policy applies solely to an ESA which may be necessary in University housing. It does not apply to Service Animals as defined and protected by the ADAAA. Information on EAB U's policies on Service Animals can be found on the Disability Services website and in the office.<sup>1</sup> EAB U reserves the right to amend this Policy as circumstances require.

### Requesting an Accommodation for an Emotional Support Animal

It is the general policy of EAB University that individuals are prohibited from having animals *[of any type]* in University housing. EAB U will consider a request from an individual with a disability or a person acting on their behalf for reasonable accommodation from this prohibition to allow an ESA that is necessary because of a disability and reasonable. No ESA may be kept in University housing at any time prior to the individual receiving approval as a reasonable accommodation.

The Office of Student Disability Services ("Disability Services") is responsible for evaluating whether to grant or deny requests for reasonable accommodation in University housing. In evaluating the request, Disability Services will consult with the Office of Residence Life and Housing ("Residence Life"), the ADA/Section 504 Coordinator, and other offices on campus, as necessary, to determine whether the requested accommodation is necessary and reasonable.

1) EAB recommends that institutions maintain separate policies for service animals and emotional support animals. Given widespread confusion on the differences between the two categories of animals, this approach reinforces the difference in function and legal definition.

Individuals with a disability, or those acting on their behalf, who reside or intend to reside in University housing and believe they need a reasonable accommodation must submit a formal request for accommodation to Disability Services. This process must be completed for each new housing contract/academic year in which the individual will be residing in University housing. In general, the process for requesting an ESA housing accommodation follows the process for other types of housing accommodations laid out on the Disability Services website. In instances where the steps described in the following process for ESA accommodation requests differs from the general housing accommodation request process, this policy will control.

#### Process for Requesting an ESA Accommodation

1. Submit a completed **Disability Housing Accommodation Request Form** (the "Request Form") to Disability Services. Forms are available in the Disability Services office and website and can be completed by the individual with the disability or someone acting on their behalf. If the individual requires assistance in completing the Request Form because of his/her disability, Disability Services can aid in completing the form. If you wish to make a verbal request for accommodation, contact Disability Services. EAB U will keep a record of all requests.
2. Prepare to have a reliable third party complete the **ESA Reasonable Housing Accommodation Verification Form** ("Verification Form"). Individuals seeking accommodations for an ESA may have what is considered a "non-obvious" disability. Therefore, additional information is usually required to verify the individual's disability and the need for the accommodation. A reliable third party is someone who is familiar with the individual's disability, the necessity for the accommodation, and the nexus between the individual's disability and the therapeutic relief of one or more symptoms of the individual's disability provided by an ESA.<sup>2</sup> If the Verification Form is not proactively completed, Disability Services will likely request the completion of this form.

#### Important Information on Reliable Third-Party ESA Verification <sup>3</sup>

A significant amount of misinformation about ESAs exists online. ESA verification services purchased online may not be considered sufficiently reliable to verify an individual's disability and the disability-related need for an ESA. Many services claiming to provide registration or certification are not legitimate as they convey no legal protections for the animal or owner. EAB U advises that individuals with questions about the legitimacy of online services or what constitutes a reliable third-party verifier contact Disability Services for more information prior to utilizing online services and submitting the Verification Form.

In general, a reliable third-party includes, but is not limited to, a licensed professional in the appropriate area of specialization (e.g. psychologist, psychiatrist, therapist, social worker) with whom you have an established treatment relationship, a licensed provider in the appropriate area of specialization you were verifiably referred to by a licensed medical provider with whom you have an established treatment relationship, or a non-medical service agency (e.g., National Association of the Deaf).

3. Submit a completed **Animal Information Form** ("Animal Form"). In order to evaluate the accommodation request, EAB U requires additional information to assess the reasonableness of the animal in question in University housing. Forms are available in the Disability Services office and website and can be completed by the individual with the disability or someone acting on their behalf. If the individual requires assistance in completing the Request Form because of his/her disability, Disability Services can aid in completing the form.

2) If your institution has coalesced around a narrower definition for a reliable third party, articulate it here. Some institutions have started to require that the licensed mental health provider verifying the need for the ESA be a practitioner working and residing in the same state as the student or the institution. EAB recommends that institutions emphasize the reliable third party be a licensed professional in an appropriate area of specialization who has an established treatment relationship with the individual, or be a licensed professional in the appropriate area of specialization to whom the individual was referred by a licensed professional with whom the individual has an established treatment relationship. At minimum, it is important to articulate that the verifying third-party be professionally qualified to make a diagnosis of a mental health disorder; a general practitioner, internist, etc., may have professional credentials, but does not have the training or expertise necessary to credibly diagnose a mental health condition, whereas a licensed psychologist, therapist, or social worker does.

3) EAB Recommends posting this caveat about third-party reliability and online verification providers in a prominent place on the webpage that details the ESA accommodation request process, as well as educating campus partners who are most likely to receive questions about ESA accommodations (e.g. all disability services and residence life and housing staff).

### Criteria for Determining if the Presence of the Animal is Unreasonable

University housing is unique in several aspects including the mandatory assignment of roommates for many individuals and the mandate that individuals must share a room or suite in certain residence halls. To ensure that the presence of an ESA is not an undue administrative burden or fundamental alteration of University housing, EAB U reserves the right to assign an individual with an ESA to a single room without a roommate. ESA accommodation does not entitle an individual with a disability to live in a particular housing facility or limit the housing facility to which they can be assigned.

For all requests for an ESA accommodation, Disability Services will consult with Residence Life to make a determination on a case-by-case basis of whether the presence of an ESA is reasonable. A request for an ESA may be denied as unreasonable if the presence of the animal:

1. Imposes an undue financial and/or administrative burden;
2. Fundamentally alters University housing policies; and/or
3. Poses a direct threat to the health and safety of others; or
4. Would cause substantial property damage to the property of others, including University property.

EAB U may consider the following factors, among others, as evidence in determining whether the presence of the animal is reasonable or in the making of housing assignments for individuals with an ESA:

1. The size of the animal is too large for available assigned housing space;
2. The animal's presence would force another individual from individual housing (e.g. serious allergies);
3. The animal's presence otherwise violates individuals' right to peace and quiet enjoyment;
4. The animal is not housebroken or is unable to live with others in a reasonable manner;
5. The animal poses or has posed in the past a direct threat to the individual or others such as aggressive behavior towards or injuring the individual or others; or
6. The animal causes or has caused excessive damage to housing beyond reasonable wear and tear.

### Conflicting Disabilities

Some individuals on campus may have allergic reactions to animals that are substantial enough to qualify as a disability. In cases in which these disabilities intersect, the University will consider the needs of both individuals in meeting its obligation to reasonably accommodate all individuals with disabilities and resolve the conflict as quickly as possible. Students with severe animal allergies impacted by an ESA should contact Disability Services.

### **Decision on ESA Accommodation Requests**

EAB U will make a prompt decision on the accommodation request upon timely receipt of all required and requested documentation.

### Insufficient Information

If any of the information provided in the above forms is incomplete or insufficient to make a determination of the reasonableness of the ESA housing accommodation, Disability Services will promptly inform the individual in writing and may request additional information. This may include, but is not limited to, communicating directly with the individual with a disability requesting the accommodation or the reliable third party who is verifying the individual's disability and the disability-related need for the ESA accommodation. The individual requesting the accommodation and the verifying third party must cooperate with Disability Services in a timely manner in providing all information needed to determine whether the requested ESA accommodation is necessary.

## Request Denied

Disability Services may deny the request if they are unable to verify the individual's disability, the disability-related need for the ESA accommodation, if the presence of the animal is unreasonable and providing the accommodation would impose an undue financial and administrative burden on EAB U or fundamentally alter the nature of the University's operations. If the request is denied, Disability Services will provide the individual for whom the accommodation was requested with a letter stating all of the reasons for the denial.

If a student disagrees with a Disability Services decision regarding an ESA accommodation, the student may appeal the decision following the same process for other accommodation request appeals as outlined on the Disability Services website. If additional documentation is required to support the request, it is the student's responsibility to provide it in a timely fashion.

In the event the denial was due to the assessment that the requested accommodation poses an undue financial and administrative burden or a fundamental alteration to the nature of EAB U's operations, Disability Services will schedule a meeting at a mutually convenient time to discuss possible alternative accommodations that would not impose such a burden or result in a fundamental alteration. EAB U will ask you to accept an alternative accommodation only if you agree it meets your disability-related needs. EAB U recognizes that an individual with a disability is generally in the best position to know whether or not a particular accommodation will be effective in meeting their needs. If agreement on an alternative accommodation is not reached, EAB U will provide a letter stating the decision on your requested accommodation and a detailed explanation of the reasons for a denial or decision to grant an alternative accommodation.

## Request Approved

If Disability Services grants the request, the individual who is granted the ESA accommodation will receive a letter so indicating and detailing next steps. The individual will be required to promptly sign the agreement detailed in this policy.

The individual must promptly provide written consent for Disability Services to disclose information regarding the request for and presence of the ESA to those individuals who may be impacted by the presence of the animal including, but not limited to, Residence Life personnel and potential and/or actual roommate(s), neighbor(s), hallmates, and floormates. Such information will be limited to information related to the animal and will not include information related to the individual or their disability.

## **General Responsibilities of Individuals with an Approved ESA Accommodation**

Owners granted the accommodation of an Emotional Support Animal in their residence hall unit shall be subject to the following rules, in addition to any other University rules and regulations not specifically related to ESAs. The owner must:

1. **Keep the Animal in Privately Assigned Residence Hall Unit.** An ESA must be contained within the owner's privately assigned individual living accommodations (e.g. room) except to the extent the individual is taking the animal out for natural relief. When an ESA is outside the private individual living accommodations, it must be in an animal carrier or controlled by a leash or harness. An ESA is not allowed in any University facilities other than the individual's privately assigned living accommodations. *[Disability Services will consider limited exceptions on a case-by-case basis, depending on the nature of the individual's disability and their disability-related need. Consult Disability Services for additional information.<sup>4</sup>]*

4) A common issue surrounding ESAs on campus is individuals seeking accommodations who re-characterize their animal (typically a dog) as a service animal upon learning that ESAs are only allowed in individually assigned living space, often putting administrators in a difficult position. While many states have laws designed to discourage misrepresenting a pet or emotional support animal as a service animal, enforcement can be challenging. Some institutions include the potential for exceptions to restrictions in other campus spaces on a case-by-case basis. While it is unclear if this tactic lessens the number of suspicious re-characterizations, it offers administrators an opportunity to dialogue about how an individual's verified need can be accommodated elsewhere on campus and the impact that mischaracterizations have on those who rely on service animals. If electing this path, it is essential to establish a consistent process through which those exceptional cases are considered, decided upon, and appealed. Consider what additional information would be needed to grant such exceptions, standardize the acceptable method(s) of collecting that information, and codify circumstances and standards by which such exceptions can be made.

2. **Keep the Animal Under Control.** The ESA must be properly housed and restrained or otherwise under the dominion and control of the owner at all times. No owner shall permit the animal to go loose or run at large. If an ESA is found running at large, the animal is subject to capture and confinement and immediate removal from University housing.
3. **Abide by All Applicable Laws and University Policies.** The owner must abide by current city, county, and state ordinances, laws, and/or regulations pertaining to licensing, vaccination, and other requirements for animals. It is the owner's responsibility to know and understand these ordinances, laws, and regulations. The University has the right to require documentation of compliance with such ordinances, laws, and/or regulations, which may include a vaccination certificate and/or other medical records. The University reserves the right to request documentation showing that the ESA has been licensed. Additionally, the owner must abide by all equally applicable residential policies, such as assuring that the ESA does not unduly interfere with routine activities of the residence or cause difficulties for individuals who reside there, such as disturb others' right to peaceful enjoyment of their housing.
4. **Ensure the Animal is Well Cared-For.** The owner is required to ensure the animal is well cared for at all times. Any evidence of mistreatment, abuse, neglect, or leaving the ESA unattended for unreasonably long periods of time may result in immediate removal of the ESA and/or discipline for the responsible individual pursuant to the University Student Code of Conduct and/or any housing-related sanctions within the Residence Life Policy Handbook. The University will not base this determination on speculation or fear about the harm or damages an animal may cause. University personnel shall not be required to provide care or food for any ESA including, but not limited to, removing the animal during emergency evacuation for events such as a fire alarm. Emergency personnel will determine whether to remove the animal and may not be held responsible for the care, damage to, or loss of the animal. The roommates/suitemates/neighbors of the owner are not required to provide care or food for any ESA. An ESA may not be left overnight in University housing to be cared for by any individual other than the owner, including roommates/suitemates/neighbors. If the owner is to be absent from their residence hall overnight or longer, the animal must accompany the owner. The owner is responsible for ensuring that the ESA is contained, as appropriate, when the owner is not present during the day while attending classes or other activities.
5. **Manage Animal Relief and Waste in a Sanitary Manner.** The owner is required to clean up after and properly dispose of the animal's waste in a safe and sanitary manner and, when provided, must use animal relief areas designated by the University.
6. **Be Responsible for Property Damage.** An individual with a disability may be charged for any damage caused by their ESA beyond reasonable wear and tear to the same extent that it charges other individuals for damages beyond reasonable wear and tear. The owner's living accommodations may also be inspected for fleas, ticks or other pests, if necessary, as part of the University's standard or routine inspections. If fleas, ticks or other pests are detected through inspection, the owner will be billed for the expense of any pest treatment above and beyond standard pest management in the residence halls. The University shall have the right to bill the owner's account for unmet obligations under this provision.
7. **Notify Disability Services if the ESA is No Longer Needed or Has Perished.** The animal is allowed in University housing for the approved period only as long as it is necessary because of the owner's disability. The owner must notify Disability Services in writing if the ESA is no longer needed, is no longer in residence, or has perished. To replace an ESA, the new animal must be necessary because of the owner's disability and the owner must follow the accommodation request procedures in this policy when requesting a different animal.
8. **Cooperate with EAB U Personnel to Establish Care Procedures.** The owner must promptly and respectfully cooperate with EAB U personnel with regard to meeting the terms of this Policy and developing procedures for care of the animal (e.g., cleaning the animal, feeding/watering the animal, designating an outdoor relief area, disposing of feces, etc.).

## Removal of an Emotional Support Animal

The University may require the Owner to remove the ESA from University housing if:

1. The animal poses a direct threat to the health or safety of others;
2. The animal causes substantial property damage to the property of others;
3. The animal's presence results in a fundamental alteration of a University program;
4. The owner does not comply with the General Responsibilities set forth above or others established as needed; or
5. The animal or its presence creates an unmanageable disturbance or interference with the University community.

EAB U will base such individualized determinations upon the consideration of the behavior of the particular animal and resident on a case-by-case basis, and in consultation with Disability Services, Residence Life, the resident, and other parties as appropriate. The University will not base this determination on speculation or fear about the harm or damages an animal may cause.

Any removal of the animal may be appealed pursuant to the general decision appeal procedure found on Disability Service's website. The owner will be afforded all rights of due process and appeal as outlined in that process.

Should the ESA be removed from the premises for any reason, the owner is expected to fulfill his/her housing obligations for the remainder of the housing contract.

## Acknowledgement and Release of Information Consent Form

I have read and understand the Emotional Support Animal Policy and Agreement and I agree to abide by the requirements applicable to ESAs. I understand that if I fail to meet the requirements set forth in the Policy, EAB University has the right to remove the ESA and I will be nonetheless required to fulfill my housing, academic, and all other obligations for the remainder of the housing contract.

I furthermore give permission to the Disability Services to disclose to others impacted by the presence of my ESA (e.g., Residence Life staff, potential and/or actual roommate(s)/neighbor(s)/hallmates/floormates that I will be living with an animal as an accommodation. I understand that this information will be shared with the intent of preparing for the presence of the ESA and/or resolving any potential issues associated with the presence of the ESA, and that my personal medical information (e.g. mental health diagnosis or nature of disability) will not be disclosed.

I further recognize that the presence of the ESA may be noticed by others visiting or residing in University Housing and agree that staff may acknowledge the presence of the animal and explain that under certain circumstances ESA are permitted for persons with disabilities.

\_\_\_\_\_  
Individual Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Disability Services Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Residence Life Representative Signature

\_\_\_\_\_  
Date



# Student Affairs Forum

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4. Each member shall not remove from this Report any confidential markings, copyright notices, and/or other similar indicia herein.
5. Each member is responsible for any breach of its obligations as stated herein by any of its employees or agents.
6. If a member is unwilling to abide by any of the foregoing obligations, then such member shall promptly return this Report and all copies thereof to EAB.