

Helpful Guidance in Assistance Animal Settlement in U. Nebraska at Kearney Case

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The University of Nebraska at Kearney recently settled a Fair Housing Act lawsuit regarding the rights to students with disabilities to have assistance animals reside in student housing. Attached to the September 15, 2015 Consent Order are a "University Housing Reasonable Accommodations Policy" and an "Assistance Animal Policy and Agreement," each including procedures and standards that other institutions may wish to consider incorporating into their own policies, or if already in place, providing some assurances of legitimacy. ("Assistance Animals" is the favored term to describe the category of animals, of any type, that may work, provide assistance, perform tasks, or provide emotional support to individuals with disabilities and that are not "Service Animals" under the ADA.) A request to keep an assistance animal in housing is considered under the Reasonable Accommodations policy. Procedures in these policies include: requiring that requests be submitted at least 60 days before move-in to housing (otherwise there is not a guarantee of accommodation); allowing the institution to request verifying documentation of the disability and that the accommodation is necessary from a reliable third party; allowing students with assistance animals to be assigned to a single room; consideration of the animal's size, whether its presence would force another resident with serious allergies to leave housing, not permitting the animal to be left overnight to be cared for by others, and a host of other reasonable factors.

If there were any remaining doubt that assistance animals must be accommodated in student housing, whether in apartments or dormitories, the federal district court for the Northern District of Ohio recently issued a strong pronouncement. In a September 16, 2015 Order and Decision of the District Court (N.D. Ohio) in a Fair Housing Act claim brought against Kent State University, the Court, responding to Kent State's contention that the law is not settled that the FHA applies to student housing, found that "the plain language of the FHA renders it applicable to "student housing."

Client Tip: *It is appropriate to require that students who wish to have an assistance animal live with them in student housing make that request in accordance with established policies and procedures for housing accommodations in a timely fashion, and to comply with requirements for the care and behavior of the approved assistance animals.*

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