



CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

Online Certification of Necessity for Emotional Support Animals

BY BRIAN MULLIN • FEBRUARY 27, 2017

Under the Fair Housing Act (FHA), institutions are required to allow students to keep untrained emotional support or therapy animals in their dwelling unit as a reasonable accommodation if: (1) the student has a disability; (2) the animal is necessary to afford the student with a disability an equal opportunity to use and enjoy the dwelling and; (3) there is an identifiable nexus between the disability and the assistance the animal provides.

For FHA purposes, a student establishes his or her need for accommodation when he or she can show that the animal ameliorates a symptom of his or her disability. However, the need for accommodation must be certified by a reliable third party with knowledge of the student's disability and need for the animal as an accommodation. Under the FHA, a reliable third party can be a doctor or other medical professional, a peer support group, a non-medical service agency, or other reliable third party.

It has become commonplace for institutions to receive template certifications of a student's need for accommodation and the ameliorative effect of the student's chosen emotional support animal issued by providers who sell certifications over the internet. Although such certifications may seem dubious, dismissing them out of hand can expose an institution to liability under the FHA. Indeed, when an online certification is issued by a licensed medical or mental health professional who conducted some evaluation of the student, whether by phone or online questionnaire, the certification will likely meet the FHA's reliability requirement.

However, institutions can seek additional information when there is a reasonable basis to question the sufficiency of a certification. For example, a certification that is unsigned, does not express the provider's knowledge of the student's disability, or fails to identify the provider's credentials can provide a reasonable basis to question the reliability of the certification. In such cases, institutions should seek additional information through an interactive process with the student.

Client Tip: *Institutions should engage in an interactive process with disabled students who request to keep an emotional support or therapy animal in campus housing as an accommodation. Such accommodations should only be denied where*

the request is not supported by reliable information or where the institution can show that the request is not reasonable (i.e. the animal would pose a direct threat to the health and safety of others, cause substantial damage to property, impose an undue financial or administrative burden, or fundamentally alter the nature of the institution's operations).