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# Canines on Campus: Companion Animals at Postsecondary Educational Institutions

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# Canines on Campus: Companion Animals at Postsecondary Educational Institutions

Rebecca J. Huss\*

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## I. INTRODUCTION

Americans love their animal companions.<sup>1</sup> For many years, the percentage of households in the United States that include a pet has exceeded sixty percent.<sup>2</sup> When considering what type of household is most likely to contain a pet, households categorized as “parents” rank at the top of the list.<sup>3</sup> One source states that “[m]ore than 75 percent of children in the United States live with pets, and children are more likely to grow up with a pet than with both parents.”<sup>4</sup> Additionally, an estimated nineteen million students are enrolled in postsecondary educational institutions.<sup>5</sup> Many of these students want to have a pet with them when they are in college.

For some people, the companion animal in their lives provides more than just love and affection; it provides a means of overcoming the challenges associated with disabilities. The U.S. government estimates that nineteen percent of the civilian noninstitutionalized population has a disability.<sup>6</sup> Although the highest percentage of persons with disabilities are adults sixty-five

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1. AM. PET PRODS. ASS'N, 2011-2012 APPA NATIONAL PET OWNERS SURVEY 49 (2011) [hereinafter APPA] (reporting that ninety-four percent of people with dogs and ninety percent of people with cats agree that a benefit of owning a pet is companionship, love, company and affection). The APPA survey is a comprehensive survey on pet expenditure and ownership that takes place every two years. The methodology used by the APPA to create this data is similar to that used by the American Veterinary Medical Association. *See, e.g.*, AM. VETERINARY MED. ASS'N, U.S. PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK 129-30 (2007) [hereinafter AVMA]. This data is derived from a survey of households and cannot be considered a definitive census of the pet population. Notwithstanding the foregoing, these two sources are widely used to estimate the pet population and information regarding pet owners in the United States. For purposes of this Article, it should be assumed that all numbers cited are estimated, even if not denoted as such.

2. APPA, *supra* note 1, at 2 (reporting that sixty-one percent of the U.S. population owned a pet in 1998, with the percentage ranging from sixty-one to sixty-three percent through the 2011-12 survey).

3. AVMA, *supra* note 1, at 5, 130.

4. MARC BEKOFF, *THE EMOTIONAL LIVES OF ANIMALS* 19-20 (2007); *see also* GAIL F. MELSON, *WHY THE WILD THINGS ARE: ANIMALS IN THE LIVES OF CHILDREN* 17 (2001) (stating that “pets live in at least 75 percent of all American households with children”).

5. *Digest of Education Statistics: 2009*, NAT'L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/programs/digest/d09/> (last visited Feb. 6, 2012) (estimating that college enrollment would be 19.6 million in the Fall of 2009 and that enrollment would continue to set new records through Fall 2018).

6. *20th Anniversary of Americans with Disabilities Act: July 26*, FACTS FOR FEATURES (U.S. Census Bureau, D.C.) May 26, 2010, at 1, available at <http://www.census.gov/newsroom/releases/pdf/cb10ff-13.pdf> [hereinafter *20th Anniversary*]. The total number of people in the United States with a disability is estimated at fifty-four million. *Id.*

years of age or older,<sup>7</sup> it is estimated that five percent of children ages five to seventeen have disabilities and ten percent of people ages eighteen to sixty-four have disabilities.<sup>8</sup> A recent report by the Government Accountability Office stated that “students with disabilities represented an estimated 11 percent of all postsecondary students, and this population appears to have grown over the past decade.”<sup>9</sup>

The number of persons using service animals to assist with disabilities is increasing.<sup>10</sup> The number of dogs being used by persons with disabilities in the United States has been estimated at 30,000.<sup>11</sup> The number of service animals being placed with individuals under the age of eighteen has risen as well.<sup>12</sup> One implication of this trend is clear – as these individuals age, if their service animal experiences are positive, they will want to be accompanied by their service animal as they move on to postsecondary educational institutions. In response to a governmental study on postsecondary education and students with disabilities, school officials indicated the need for more guidance in establishing institutional policies regarding the use of service and comfort animals to ensure that the schools are complying with the law.<sup>13</sup>

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7. *Id.* (stating that thirty-eight percent of adults sixty-five or older have disabilities).

8. *Id.* The estimate of females with a disability is 12.4 percent, compared with 11.7 percent of males with a disability. *Id.*

9. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-33, HIGHER EDUCATION AND DISABILITY: EDUCATION NEEDS A COORDINATED APPROACH TO IMPROVE ITS ASSISTANCE TO SCHOOLS IN SUPPORTING STUDENTS 8 (2009) [hereinafter EDUCATION NEEDS A COORDINATED APPROACH]. The percentage of persons with disabilities who had a bachelor's degree or higher is only thirteen percent compared with thirty-one percent of persons with no disability. *20th Anniversary, supra* note 6.

10. See Tiffany Huggard-Lee, *Service Animals: Too Much of a Good Thing?*, DAY IN WASHINGTON (Feb. 13, 2010), <http://dayinwashington.com/?p=494>.

11. Ed James, *Veterinary Teaching Hospital Fee Structure for Disabled Clients Partnered with Guide, Hearing, and Service Dogs*, INT'L ASS'N OF ASSISTANCE DOG PARTNERS, <http://www.iaadp.org/vthfee.html> (last visited Aug. 8, 2011) (estimating that there are 30,000 disabled individuals working with guide, hearing, and service dogs). *But see* Nora Wenthold & Teresa A. Savage, *Ethical Issues with Service Animals*, 14 TOPICS IN STROKE REHABILITATION 68, 68 (2007) (estimating there are 17,000 assistance dogs working in the U.S.). There is a project to try to more accurately estimate the number of service animals in use, but at this time it is on hold due to a lack of funding. See SERVICE DOG CENSUS PROJECT, <http://www.censusproject.org/#1> (last visited, Aug. 8, 2011).

12. Rebecca J. Huss, *Canines in the Classroom: Service Animals in Primary and Secondary Educational Institutions*, 4 J. ANIMAL L. & ETHICS 2 (2010) (manuscript at 1-2) [hereinafter Huss, *Classroom*], available at [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1586029](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1586029) (discussing the increasing number of service animals partnered with children in an article focusing on service animals in primary and secondary education).

13. See EDUCATION NEEDS A COORDINATED APPROACH, *supra* note 9, at 30-31.

This Article focuses on the issues that arise when students wish to attend a postsecondary institution accompanied by an animal.<sup>14</sup> Part II begins by analyzing federal law applicable to students bringing service and assistance animals to campus. Part III explores the use of animal-assisted activities on campus. Part IV continues with an examination of policies allowing students to have companion animals in campus housing. Part V considers concerns administrators raise about allowing animals on campus. Finally, Part VI sets forth the steps an educational institution should implement to ensure compliance with the law and proposes actions that can be taken to protect humans and safeguard companion animals on campus.

## II. FEDERAL LAWS: SERVICE ANIMAL VERSUS ASSISTANCE ANIMAL<sup>15</sup>

The issue of allowing animals to assist persons with disabilities on campus has been challenging for postsecondary institutions.<sup>16</sup> Although “tradi-

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14. Issues relating to faculty and staff members with service animals are beyond the scope of this Article, as that topic deals with service animals in employment situations.

15. The purpose of this Article is to provide an analysis of the federal laws students likely will raise wanting to bring animals onto campus and into campus housing. The various remedies and defenses to the federal laws discussed *infra* notes 18-111 and accompanying text are beyond the scope of this Article. Given recent activity in the area, the author would caution the reader to consider issues such as the applicability of the Eleventh Amendment that provides that private individuals may not sue non-consenting states in federal court. IVAN E. BODENSTEINER & ROSALIE BERGER LEVINSON, 2 ST. & LOCAL GOV'T CIV. RIGHTS LIABILITY § 2:21 (2d ed. 2011) (discussing defenses under the ADA and the Fourteenth Amendment); *see also* Diane Heckman, *The Impact of the Eleventh Amendment on the Civil Rights of Disabled Educational Employees, Students and Student-Athletes*, 227 EDUC. L. REP. 19 (2008) (discussing the applicability of the Eleventh Amendment in connection with cases involving the ADA and Rehabilitation Act).

One commentator has asserted that “higher education agencies have increasingly begun to raise the immunity defense in disability discrimination cases,” with some courts barring the claims based on immunity and others allowing the claims to move forward. LAURA ROTHSTEIN & JULIA ROTHSTEIN, *DISABILITIES AND THE LAW* § 3:27 (4th ed. 2009) (discussing procedural and remedial issues under section 504 of the Rehabilitation Act and the ADA); *see also* Heckman, *supra*, at 37-41 (discussing the waiver of immunity by states that accept federal funds pursuant to the Rehabilitation Act and stating that although “the majority position is that public universities may be sued, it is not unanimous” (footnote omitted)). There has not been a Supreme Court decision relating to state immunity under the FHA. *Kuchmas v. Towson Univ.*, No. RDB 06-3281, 2007 WL 2694186, at \*8 (D. Md. Sept. 10, 2007). As a recent case involving a postsecondary institution stated, “the text of the FHA lacks any clear statements of Congress’s intent to abrogate states’ immunity under the Eleventh Amendment” and held that the Eleventh Amendment would bar the private suit against the university under the FHA. *Id.* (recognizing that the Supreme Court has

tional” service animals such as guide dogs have been accommodated on campuses, the use of animals to assist individuals with psychiatric issues is a more recent trend, and federal agencies have provided limited guidance.<sup>17</sup> This section of the Article will discuss the federal laws most likely to be applicable to a student wishing to bring a service animal or assistance animal onto campus.

*A. Americans with Disabilities Act and  
Section 504 of the Rehabilitation Act*

The federal Americans with Disabilities Act (ADA) is a comprehensive civil rights law that prohibits discrimination on the basis of disability.<sup>18</sup> Among other issues, the ADA provides that individuals with disabilities must

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not ruled on the issue but citing to multiple cases within and outside the circuit that found that states could assert immunity under the Eleventh Amendment in FHA actions). The Towson University case is discussed *infra* note 69. See also ROBERT G. SCHWEMM, HOUSING DISCRIMINATION LAW AND LITIGATION § 12B:6 n.9 (2011) (discussing that few FHA cases against state agencies, state officials, and states have been reported and the case law finding that states have successfully asserted immunity in these cases, although the “guidance is less than clear”). It is important to note that even if the Eleventh Amendment applies and a state is entitled to assert immunity in a suit based on the FHA, prospective equitable relief would still be permitted, and suits by the United States would not be barred. *Id.* § 12B:6. Furthermore, the reality is that a substantial number of students attend the independent nonprofit (and profit) colleges and universities that are clearly subject to Title III of the ADA and the FHA. *Quick Facts About Private Colleges and Universities*, NAT’L ASS’N OF INDEP. COLLEGES & UNIVS., <http://www.naicu.edu/about/quick-facts-about-private-colleges> (last visited Feb. 2, 2012) (stating that half of the nonprofit colleges and universities are private, with 1600 private institutions enrolling 3.4 million students).

16. See ROTHSTEIN & ROTHSTEIN, *supra* note 15, § 3:9.

17. *Id.* There is limited case law relating to students with service animals asserting claims based on the ADA or section 504. See, e.g., *Alejandro v. Palm Beach State Coll.*, No. 11-80335-CIV, 2011 WL 7400018, at \*8 (S.D. Fla. Nov. 8, 2011) (enjoining college and its employees from preventing student with service animal from having access to all areas of campus); *Hall v. St. Mary’s Seminary & Univ.*, 608 F. Supp. 2d 679, 683 (D. Md. 2009) (granting the university’s motion to dismiss in a case where the student alleged, among other issues, that one of the defendants “traumatized the Plaintiff by publicly questioning her, in a loud and abusive tone of voice, as to why she needed the use of a service dog on campus”), *aff’d*, 378 F. App’x 326 (4th Cir. 2010); *Kenny v. Loyola Univ. of Chi.*, No. 02 C 1006, 2003 WL 503119, at \*1 (N.D. Ill. Feb. 24, 2003) (denying university’s motion to dismiss in a case where student with a service dog contended that the university failed to accommodate her disabilities in violation of the ADA and section 504).

18. 42 U.S.C. § 12101 (2006 & Supp. IV 2010).

be granted access to public entities (state institutions) under Title II and places of public accommodation (private institutions) under Title III.<sup>19</sup>

Section 504 of the Rehabilitation Act provides “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, . . . be denied the benefits of . . . any program or activity receiving Federal financial assistance.”<sup>20</sup> Although section 504 applies only to institutions receiving federal financial assistance, the reality is that most postsecondary institutions fit within this category.<sup>21</sup> Only if a private postsecondary institution received no government funds would it be excluded from the provisions of section 504 (although it would be covered by the ADA).

The U.S. Department of Justice (DOJ) and the U.S. Department of Education “share responsibility for regulation and enforcement of the ADA in postsecondary educational settings.”<sup>22</sup> The U.S. Department of Education’s Office of Civil Rights (OCR) is the governmental agency that deals with complaints relating to a college’s or university’s violation of the ADA or section 504.<sup>23</sup> Frequently, cases refer to both the ADA and section 504 when alleging discrimination, and the cases generally do not distinguish the

19. See generally 42 U.S.C. §§ 12131-65 (2006) (Title II); 42 U.S.C. §§ 12181-89 (Title III). The definition of public accommodation includes “undergraduate, or postgraduate private school, or other place of education.” 42 U.S.C. 12181(7)(J).

20. 29 U.S.C. § 794(a) (2006).

21. ROTHSTEIN & ROTHSTEIN, *supra* note 15, § 3:1 (stating that “virtually all colleges and universities receive federal financial assistance”).

22. Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56,164, 56,216 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35) [hereinafter Title II Final Rule] (implementing the final regulation for Title II of the ADA and providing guidance on changes in the regulations); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56,236, 56,306 (Sept. 15, 2010) (codified as 28 C.F.R. § 36.104) [hereinafter Title III Final Rule] (implementing the final regulations for Title III of the ADA and providing guidance on changes in the regulations).

23. See *How to File a Discrimination Complaint with the Office for Civil Rights*, U.S. DEP’T EDUCATION, <http://www2.ed.gov/about/offices/list/ocr/qa-complaints.html> (last visited Feb. 2, 2012) (discussing the Office of Civil Rights complaint process); see generally Dawinder S. Sidhu, *Cujo Goes to College: On the Use of Animals by Individuals with Disabilities in Postsecondary Institutions*, 38 U. BALT. L. REV. 267 (2009) (describing the approach that the Department of Education’s Office of Civil Rights utilized prior to the adoption of the new regulations in Title II relating to service animals). In response to a request to the Department of Education, the author received a copy of the October 25, 2006, Memorandum titled *Service Animal Guidance* referenced in the Sidhu article and confirmation that no other memorandum or document pertaining to the use of service animals in a post-secondary setting was available. Letter from Ramin Taheri, Staff Attorney, Program Legal Group, Office for Civil Rights, U.S. Dep’t of Educ. to author (Mar. 1, 2011) (on file with author); Memorandum from Office for Civil Rights Program Legal Grp. to Office for Civil Rights Reg’l Offices (Oct. 25, 2006) (on file with author) [hereinafter October 25, 2006, Memorandum].

claims.<sup>24</sup> Both laws provide that an otherwise qualified individual with a disability<sup>25</sup> should not be excluded from participation in programs at a postsecondary institution.<sup>26</sup> Institutions are required to make reasonable modifications to policies, practices, or procedures so long as they would not fundamentally alter the nature of the program.<sup>27</sup> As an example, a college cannot prohibit the use of a service animal if doing so would have the effect of limiting a disabled student's participation in the program.<sup>28</sup> Accommodations are not required if they would cause an "undue financial or administrative burdens"<sup>29</sup> or cannot be made "without much difficulty or expense."<sup>30</sup> Schools may require students to provide documentation supporting the student's claim that he or she is disabled and needs an accommodation.<sup>31</sup>

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24. See *supra* note 15. An exception would be if the defendant is a state institution and is raising the issue of immunity under the Eleventh Amendment. In that circumstance, it may be important to distinguish between the two claims. See *supra* note 15 (discussing state immunity).

25. Disability is defined as "with respect to an individual[,] (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. §12102(1) (Supp. IV 2010).

26. ROTHSTEIN & ROTHSTEIN, *supra* note 15, ch. 3 (discussing disabilities and higher education).

27. See 29 U.S.C. § 794 (2006); 42 U.S.C. § 12201(h); 34 C.F.R. § 104.44 (2011); see also *Dohmen v. Iowa Dep't for the Blind*, 794 N.W.2d 295 (Iowa Ct. App. 2010) (discussing a case where a student with a visual impairment was not allowed to utilize her service animal in a program where there was a policy on the limitation of visual aids, including guide dogs). The *Dohmen* case involved several issues, including exhaustion of administrative remedies; however, a significant argument that the Iowa Department for the Blind raised was that "Dohmen's requested accommodation required a fundamental alteration" in the program. *Id.* at 311-12. A jury found that the Iowa Department for the Blind "did not discriminate against Dohmen in violation of Iowa civil rights laws," section 504, or the ADA. *Id.* at 301. The Iowa Court of Appeals also analyzed and found that, in this circumstance, "Congress acted within its . . . authority in abrogating the state[s] sovereign immunity for claims under Title II of the ADA." *Id.* at 309; see *supra* note 15 (discussing the issue of state immunity).

28. 34 C.F.R. § 104.44(b).

29. ROTHSTEIN & ROTHSTEIN, *supra* note 15, § 3:10 (citing cases interpreting section 504).

30. 42 U.S.C. § 12181(9) (2006).

31. ROTHSTEIN & ROTHSTEIN, *supra* note 15, § 3:2.



## 1. DOJ Regulations Relating to Service Animals

Recent changes to the regulations governing the ADA include a definition of service animal consistent with previous DOJ guidance on the issue.<sup>32</sup> The current definition of service animal is: “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”<sup>33</sup> The regulations also require entities to make reasonable accommodations to permit the use of a miniature horse as a service animal, but the entity may consider several assessment factors prior to allowing the miniature horse into a specific facility.<sup>34</sup>

The DOJ regulations recognize that it is the responsibility of the person with a disability to control his or her service animal, and the public entity or public accommodation is not responsible for the care or supervision of an animal.<sup>35</sup> Furthermore, a service animal may be excluded from the premises if “(1) [t]he animal is out of control and the animal’s handler does not take effective action to control it; or (2) [t]he animal is not housebroken.”<sup>36</sup>

32. Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 PEPP. L. REV. 1163, 1174-79 (2010) [hereinafter Huss, *Service Animals*] (discussing the proposed ADA regulations).

33. 28 C.F.R. § 35.104 (2011). The remainder of the definition is as follows:

Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the [handler’s] disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

*Id.* This language is mirrored in regulations applicable to Title III of the ADA. Title III Final Rule, 75 Fed. Reg. 56,236, 56,250 (Sept. 15, 2010) (codified as 28 C.F.R. § 36.104). These new regulations became effective on March 15, 2011. *Id.* at 56,237.

34. 28 C.F.R. §§ 35.136(i), 36.302(c)(9) (effective date Mar. 15, 2011).

35. *Id.* §§ 35.136(d)-(e), 36.302(c)(4)-(5) (providing that the animal shall be tethered to the individual unless the handler’s disability makes them unable to use such a tether or it would interfere with the service animal’s tasks or work). If unable to use a tether, the handler must otherwise be able to control the animal through voice control or other signals. *Id.* § 36.302(c)(4).

36. *Id.* §§ 35.136(b), 36.302(c)(2).

Generally entities are not allowed to “ask about the nature or extent of [a] person’s disability” but are allowed to ask two questions “to determine whether [the] animal qualifies as a service animal.”<sup>37</sup> The entity may “ask if the animal is required because of a disability and what work or task the animal has been trained to perform.”<sup>38</sup> The DOJ reiterated its prior policy in the regulations that stated that entities “shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.”<sup>39</sup>

Prior to the passage of the new ADA regulations, the Department of Education allowed entities to require an individual utilizing a service animal to furnish documentation to support the individual’s use of the service animal.<sup>40</sup> In other contexts, such as requests for additional time taking examinations, students may be required to provide documentation supporting the student’s claim that he or she is disabled and needs an accommodation, and the Department of Education likely will continue to allow this inquiry.<sup>41</sup> Even if the more restrictive inquiry rules are applied, nothing prevents educational institutions from inviting students to provide documentation to avoid being subject to the allowed inquiries on a repeated basis.

## 2. ADA’s Application to Campus Housing

The preamble to the ADA references housing as a barrier for persons with disabilities.<sup>42</sup> However, the ADA is not meant to apply to all types of housing. Under Title II, the ADA applies to public entities including “any department, agency, . . . or other instrumentality of a [s]tate.”<sup>43</sup> The types of housing Title III covers are limited to “an inn, hotel, motel, or other place of

37. *Id.* §§ 35.136(f), 36.302(c)(6).

38. *Id.* §§ 35.136(f), 36.302(c)(6).

39. *Id.* §§ 35.136(f), 36.302(c)(6).

40. October 26, 2006, Memorandum, *supra* note 23, at 14-17 (emphasizing “interactive process” to use with students). The Department of Education also allowed for entities to require that service animals be vaccinated. *Id.* at 19-20; *see also University May Require Proper Vaccination of Service Animals*, DISABILITY COMPLIANCE FOR HIGHER EDUC., Oct. 1, 2008, at 10 (reporting that the Office for Civil Rights determined that a “university may require individuals to comply with local ordinances and regulations requiring animals to have current vaccinations or immunizations common for that type of animal” and “may also require individuals to show proof of those vaccinations, as long as those restrictions do not have the effect of denying or limiting the access of a qualified individual with disabilities to education programs or activities”).

41. ROTHSTEIN & ROTHSTEIN, *supra* note 15, §§ 3:2, :9.

42. 42 U.S.C. § 12101(a)(3) (2006) (stating “discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations”).

43. *Id.* § 12131(1).

lodging.”<sup>44</sup> As discussed above, undergraduate and graduate private schools and other places of education are included in the definition of public accommodation.<sup>45</sup> The issue of whether the ADA (and section 504) would apply to campus housing is straightforward. It may be considered a reasonable accommodation for a public or private institution to waive a no-pet rule to allow a student with a service animal (as defined by the ADA) to reside in campus housing. Public and private institutions frequently reference the ADA in their housing policies.<sup>46</sup>

Recent changes in the ADA regulations also illustrate that the ADA is applicable to campus housing. The ADA regulations now include a definition of “Housing at a place of education”<sup>47</sup> as “housing operated by or on behalf of an . . . undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence.”<sup>48</sup> The purpose of the addition to this definition was to address how the ADA applied to these types of housing, given the varied characteristics of such housing.<sup>49</sup> The guidance to the regulations recognized that such housing can serve as program areas and the ability to use such “areas is an essential part of having access to these educational programs and activities.”<sup>50</sup> The result of the additional language is to provide for accessibility standards to be applied in addition to the requirements set forth under existing transient lodging standards.<sup>51</sup>

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44. *Id.* § 12181(7). The definition excludes “establishment[s] located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.” *Id.*

45. *Id.* § 12181(J).

46. *See, e.g., Residential Life: Emerson Hall*, ITHACA C., <http://www.ithaca.edu/reslife/halls/emerson/> (last visited Feb. 2, 2012) (referencing the ADA in the description of a dormitory); *Service Dog Guidelines*, U. ARIZONA, <http://drc.arizona.edu/about/ada/service-animals> (last visited Feb. 2, 2012) (referencing the ADA in its guidelines).

47. *See* 28 C.F.R. §§ 35.104, 36.104 (2011). This language is mirrored in Title II and Title III. Section 504 regulations provide that a recipient “[of federal funds] that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others.” 34 C.F.R. § 104.45 (2011).

48. 28 C.F.R. §§ 35.104, 36.104.

49. *See* Title II Final Rule, 75 Fed. Reg. 56,164, 56,215 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35); Title III Final Rule, 75 Fed. Reg. 56,236, 56,307 (Sept. 15, 2010) (codified as 28 C.F.R. § 36.104) (discussing the fact that such housing can be used for the academic year but may be closed during school vacation periods and used as short-term housing in the summer).

50. Title II Final Rule, 75 Fed. Reg. at 56,215; Title III Final Rule, 75 Fed. Reg. at 56,307 (discussing the fact that such housing can be used for recreational, educational sessions and social activities).

51. Title II Final Rule, 75 Fed. Reg. at 56,216 (discussing the changes to 28 C.F.R. § 151(f)); Title III Final Rule, 75 Fed. Reg. at 56,308 (discussing the changes

The guidance relating to this new definition of “Housing at a place of education” recognized that “the Department of Housing and Urban Development (HUD) has enforcement responsibility for housing subject to [T]itle II of the ADA.”<sup>52</sup> The ADA and the Fair Housing Act (FHA) may be applicable to the same housing.<sup>53</sup>

If the ADA and FHA used identical definitions for the animals used to assist persons with disabilities, the recent changes to the ADA regulations would provide clear guidance for institutions dealing with requests by students to be accompanied by service animals. However, as discussed below, a different standard for assistance animals is applicable to housing under the FHA.

### B. Fair Housing Act

Congress passed the FHA as part of the Civil Rights Act of 1968.<sup>54</sup> It provided protection from discrimination in housing on the basis of race, color, national origin, or gender.<sup>55</sup> In 1988, the Fair Housing Amendments Act was passed, expanding the FHA to include handicapped persons in those classes protected from housing discrimination.<sup>56</sup> HUD is responsible for the ad-

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to 28 C.F.R. § 36.406(e)). Residential housing used on a year-round basis to graduate students and staff is considered comparable to rental housing and is exempt from the transient lodging standards but still must comply with the requirements for residential facilities. Title III Final Rule, 75 Fed. Reg. at 56,308.

52. Title II Final Rule, 75 Fed. Reg. at 56,215; Title III Final Rule, 75 Fed. Reg. at 56,307. It also referenced the existing accessibility requirements through the application of the Uniform Federal Accessibility Standards for section 504. Title III Final Rule, 75 Fed. Reg. at 56,307.

53. For example, the Department of Education’s Office of Civil Rights would be the agency that would take action on claims based on the ADA and section 504 relating to dormitories. *E.g.*, *Letter to: Oklahoma State University, No. 07-04-2080*, 34 NAT’L DISABILITY L. REP. 128 (2006) (reporting on a complaint by a student who alleged that the university discriminated against her when it refused to allow her to reside in a dormitory when she was taking a course load of less than twelve credit hours due to a learning disability); *Letter re: Lander University, No. 11-06-2005*, 34 NAT’L DISABILITY L. REP. 152 (2006) (reporting on complaint relating to the imposition of a fee for a student with a disability who requested a single room); *Letter to: Monmouth College, No. 05-03-2012*, 26 NAT’L DISABILITY L. REP. 261 (reporting on a complaint by a student with a disability requesting an air conditioner in her dormitory room).

54. *See* 42 U.S.C. §§ 3601-19 (2006); *see also* H.R. REP. NO. 100-711, at 14 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2176, *available at* 1988 WL 169871, at \*15 (discussing the background and need for the Fair Housing Act).

55. *See* 42 U.S.C. §§ 3601-19.

56. Fair Housing Amendments Acts of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988); *see also* H.R. REP. NO. 100-711, at 17, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2179, *available at* 1988 WL 169871, at \*18 (discussing the need for an

ministration of the FHA;<sup>57</sup> however, DOJ and HUD are jointly responsible for enforcing the FHA.<sup>58</sup> Just as the ADA covers a broad spectrum of public accommodations, the FHA covers a wide range of housing.<sup>59</sup>

### 1. Campus Housing as a “Dwelling” Under the FHA

The determination of whether campus housing is covered under the FHA is dependent on whether the housing is considered a “dwelling.” The broad definition of “dwelling” under the FHA includes “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families,” and family includes a single individual.<sup>60</sup>

A postsecondary institution’s administrator may be tempted to argue that campus housing should not be considered a dwelling under the FHA. Essentially, some housing that is “transient” (and a public accommodation) is covered under the ADA but not the FHA.<sup>61</sup> In other contexts, such as homeless shelters, courts have considered several factors, including the length of

amendment to the Fair Housing Act to protect the handicapped). The FHA is sometimes referred to as the Fair Housing Amendments Act. In this Article, references to the FHA include the FHA as amended by the Fair Housing Amendments Act. Handicap is defined as “(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities[;] (2) a record of having such an impairment[;] or (3) being regarded as having such an impairment . . . .” 42 U.S.C. § 3602(h). The term handicap “does not include current, illegal use of or addiction to a controlled substance.” *See id.* This Article may use the terms “handicap” and “disability” interchangeably, as many of the court decisions do in this area. *See, e.g.,* Giebeler v. M&B Assocs., 343 F.3d 1143, 1146 & n.2 (9th Cir. 2003) (discussing the use of the terms “handicap” and “disability”).

57. 42 U.S.C. § 3608. The Attorney General or private persons may enforce the FHA. *See id.* §§ 3613-14.

58. Joint Statement of the Dep’t of Housing and Urban Dev. & the Dep’t of Justice, Reasonable Accommodations Under the Act, 1 (May 17, 2004) [hereinafter HUD/DOJ Reasonable Accommodations Under the Act], available at <http://www.hud.gov/offices/ftheo/library/huddojstatement.pdf>.

59. Although many of the cases discussing the applicability of the FHA deal with multifamily dwellings, under many circumstances, single-family homes are also included under the purview of the statute. *See* 42 U.S.C. § 3603(b)(1).

60. *Id.* § 3602.

61. For example, 1991 accessibility standards mention dormitories as a form of “transient housing,” and, although the ADA Accessibility Guidelines for Buildings and Facilities “contain[] provisions for both residential facilities and transient lodging, the guidelines do not indicate which requirements apply to housing provided in an educational setting.” Title II Final Rule, 75 Fed. Reg. 56,164, 56,215 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35); Title III Final Rule, 75 Fed. Reg. 56,236, 56,307 (Sept. 15, 2010) (codified as 28 C.F.R. § 36.104).

time one expects to stay in a structure,<sup>62</sup> alternative places of residence, and the structure's purpose.<sup>63</sup> Unfortunately for any postsecondary institution's administrator that argues campus housing should not be considered a dwelling, the cases where a court has found that the FHA has not been applicable have been limited to situations involving housing such as prisons and, in some cases, emergency shelters.<sup>64</sup> As unhappy as a college student may be living in campus housing,<sup>65</sup> there is no real comparison to a prison or shelter – not least is the fact that colleges require the students to pay for (rent) their housing.

There are other compelling arguments that campus housing students use during academic terms should be considered dwellings under the FHA. The guidance relating to the ADA regulations recognized that “[r]esidential housing in an educational setting is also covered by the FHA[], which requires newly constructed multifamily housing to include certain features of accessi-

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62. See, e.g., *Tara Circle, Inc. v. Bifano*, No. 95-CIV.6522 (DLC), 1997 WL 399683, at \*16 (S.D.N.Y. July 15, 1997) (finding that the FHA was not applicable to a former dormitory that was used twenty-one days over an eighteen-month period), *aff'd*, 173 F.3d 846 (2nd Cir. 1999).

63. See Greg C. Cheyne, *Facially Discriminatory Admissions Policies in Homeless Shelters and the Fair Housing Act*, 1 U. CHI. LEGAL F. 459, 483-84 (2009) (analyzing case law used to determine whether homeless shelters would be covered by the FHA); see also Karen Wong, *Narrowing the Definition of “Dwelling” Under the Fair Housing Act*, 56 UCLA L. REV. 1867, 1886 (2009) (analyzing, among other issues, the differences in remedies under the FHA and ADA in the context of arguing that homeless shelters should not be considered dwellings under the FHA).

64. Cheyne, *supra* note 63, at 484-85 (discussing a case that found that the FHA was not applicable to a city jail because it was not a residence but a penal institution and the mixed cases involving homeless shelters). In a case involving a student who had a choice between a monetary grant with no housing contract and an option that included dormitory housing, the State of New York argued that the student's FHA claims should be dismissed because she was not a “buyer” or “renter” (because she did not provide any consideration for the dormitory housing) under the FHA. Reply Memorandum of Law in Support of Motion to Dismiss Plaintiff's Amended Complaint at 2-4, *Doe v. Hunter Coll. of the City Univ. of N.Y.*, No. 04-CIV-6740 (S.D.N.Y. Dec. 7, 2004) (on file with author). The student in this case “had been barred from her dormitory room . . . because she was hospitalized after a suicide attempt.” Press Release, Judge David L. Bazelon Center for Mental Health Law, *Hunter College Settles Lawsuit by Student Barred from Dorm after Treatment for Depression* (Aug. 23, 2006), <http://www.bazelon.org/LinkClick.aspx?fileticket=Y9wtDQIB0Ss%3d&tabid=314>. The case was settled, with the university (Hunter College is part of the City University of New York) paying the student \$65,000. *Id.*

65. E.g., *Emory University First-Year Housing Requirement*, EMORY U., [http://www.emory.edu/HOUSING/UNDERGRAD/first\\_req.html](http://www.emory.edu/HOUSING/UNDERGRAD/first_req.html) (last visited Aug. 8, 2011) (requiring first-year students to live in on-campus housing unless living in Atlanta with the student's immediate family members).

ble and adaptable design.”<sup>66</sup> References in HUD regulations and guidance documents support the premise that the FHA applies to dormitories at educational institutions.<sup>67</sup>

These references are consistent with limited case law that has applied the FHA to residential facilities on college campuses in the past.<sup>68</sup> One of the reasons cases do not address this issue specifically is that claims based on the

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66. U.S. DEP'T OF JUSTICE, GUIDANCE ON THE 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN (2010), *available at* <http://www.ada.gov/regs2010/2010ADAStandards/Guidance2010ADASTandards.htm> (providing guidance concerning 24 C.F.R. § 35.151(f)).

67. *E.g.*, 24 C.F.R. § 100.201 (2011). This provision in the regulations provides in the definition of “dwelling unit” for a multifamily dwelling that:

Dwelling unit means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

*Id.*; *see also Part 109 – Fair Housing Advertising*, U.S. DEPARTMENT HOUSING & URBAN DEV., 4, <http://www.hud.gov/offices/fheo/library/part109.pdf> (last visited Apr. 18, 2012) (providing that words in advertisements stating or implying that the housing is available to only one gender and stating “[n]othing in this part restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions”). The ability to segregate by gender is specifically allowed pursuant to Title IX, Education Amendments Act of 1972. *See* 20 U.S.C. § 1681 (2006); 34 C.F.R. § 106.32 (2010) (providing that a recipient of federal financial assistance may provide separate housing on the basis of sex, subject to conditions that the housing be comparable and “[p]roportionate in quantity to the number of students of [each] sex applying for such housing”).

68. *See, e.g.*, *Hack v. President & Fellows of Yale Coll.*, 237 F.3d 81, 91 (2d Cir. 2000) (assuming the FHA was applicable in case involving college dormitory alleging discrimination based on religion and finding the university’s policy did not have a discriminatory impact in violation of the FHA); *Federal Judge Dismisses DOJ Lawsuit Against Virginia College*, FAIR HOUSING-FAIR LENDING, Aug. 1, 1996, § 8.7 (describing *United States v. Mary Washington Coll.*, No. 3:96CV180 (E.D. Va. May 8, 1996) assuming the FHA is applicable in a case involving a dormitory room alleged to be inaccessible for a student in a wheelchair). The district court dismissed the claim the Department of Justice brought on behalf of HUD alleging that the college violated the FHA by denying a student a reasonable accommodation by failing to waive a single occupancy fee for a dormitory room. *See ADA Housing Claim Against College Dismissed*, COMPLIANCE GUIDE NEWSL. (ADA, D.C.) July 1996, at 12; *see also Wilson v. Glenwood Intermountain Props., Inc.*, 876 F. Supp. 1231, 1237 (D. Utah 1995) (utilizing the FHA to challenge a university’s off-campus housing program), *vacated on other grounds*, 98 F.3d 590 (10th Cir. 1996).

FHA often are intermixed with ADA and section 504 claims.<sup>69</sup> In many cases, it was irrelevant, as the coverage of the laws and level of protection were the same.

Finally, recent activity by HUD and the DOJ – raising only a violation of the FHA in situations involving access to housing of student with assistance animals – provides clear evidence that campus housing will be considered a dwelling. In a complaint against Millikin University, HUD issued a charge of discrimination in connection with a student not being allowed to

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69. *E.g.*, *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, No. 08-14922, 2009 WL 275652, at \*1 (E.D. Mich. Feb. 5, 2009) (analyzing claims by a student under the FHA, ADA, and section 504 relating to a request for a preliminary injunction to allow the student with a disability enrolled in a non-degree program to be allowed to reside in on-campus housing). The *Fialka-Feldman* court did not analyze the applicability of the FHA to on-campus housing (which was not an issue raised by the university) but found that the FHA claims against the named defendants were barred by the Eleventh Amendment. *See id.* at \*6; *see also supra* note 15 (discussing the role of the Eleventh Amendment). The *Fialka-Felman* court at this stage also found that the plaintiff's "requested accommodation is not necessary to ameliorate the effects of his disability and to afford him an opportunity . . . to use and enjoy University on-campus housing." *Fialka-Feldman*, 2009 WL 275652, at \*8. The *Fialka-Feldman* court asserted that it was not the student's "disability but the fact that he is not enrolled in a degree-granting program that prevents him from securing University on-campus housing." *Id.* at \*7. Subsequently, the district court found in favor of a permanent injunction to allow the student access to on-campus housing relying on a failure to accommodate claim brought under section 504. *See Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 678 F. Supp. 2d 576, 588 (E.D. Mich. 2009); *see also Franchi v. New Hampton Sch.*, 656 F. Supp. 2d 252, 260-61 (D.N.H. 2009) (rejecting a secondary school's argument that the school's dormitories were not "dwellings" and stating that a handful of cases have ruled that a school dormitory is in fact a "dwelling" subject to the FHA); *cf. Barker v. Niles Bolton Assocs., Inc.*, 316 F. App'x 933 (11th Cir. 2009) (discussing a case alleging violations of FHA accessibility standards relating to university housing). Note that in the *Barker* case, Emory University argued that only the FHA should be applicable to student housing, not the ADA. United States' Brief as Amicus Curiae in Opposition to Emory University's Motion to Dismiss at 11, *Barker v. Emory University*, No. 1 02-CV-2450-CC (N.D. Ga. Mar. 3, 2006), *available at* <http://www.ada.gov/briefs/barkopbr.pdf>; *see also Kuchmas v. Towson Univ.*, 553 F. Supp. 2d 556, 565 (D. Ma. 2008) (holding that the statute of limitations with respect to a design and construction claim in violation of FHA accessibility requirements began when the plaintiff leased the unit of housing that was privately owned on land leased from the university). The Towson University Housing Office had informed the plaintiff that no handicapped accessible rooms were available and referred him to Millennium Hall. *Kuchmas*, 553 F. Supp. 2d at 558. To be eligible to reside at Millennium Hall, unless permitted by the director of the university's Housing and Residence Life, an individual must be a full-time student at Towson University. *2011-12 Millennium Hall Housing License*, TOWSON U., <http://www.millenniumhall.com/applications-forms/> (last visited Feb. 10, 2012).



have a service dog in her dormitory room.<sup>70</sup> The DOJ recently filed a lawsuit against the University of Nebraska at Kearney alleging that the university violated the FHA in a case of a student with anxiety who wanted to keep an emotional assistance animal in university housing.<sup>71</sup> HUD and the DOJ are confident the FHA can be applied to campus housing, and an argument that campus housing students use during the academic term should not be considered a dwelling likely would not prevail.<sup>72</sup>

## 2. Assistance Animals Covered by the FHA

Similarly to the ADA and section 504, a plaintiff may prove discrimination under the FHA by showing a failure to provide a reasonable accommoda-

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70. Charge of Discrimination at 2, HUD v. Millikin Univ., FHEO Case No. 05-06-0829-8 (Sept. 18, 2009) (on file with author). Based on the facts in the complaint, the dog would have met the ADA definition of service animal, as he was task-trained to assist the student with her seizure disorder. *See id.* at 4-5. The charge of discrimination requested an order that would declare the described university's housing practices violate the FHA and its implementing regulations. *Id.* at 8-9.

71. *See* Complaint and Request for Jury Trial, United States v. Univ. of Neb. at Kearney, No. 4:11CV03209 (D. Neb. Nov. 23, 2011). This case arose out of a complaint filed with HUD. Charge of Discrimination at 4-7, HUD v. Univ. of Neb. at Kearney, FHEO Case No. 07-10-0930-8 (H.U.D.A.L.J. Sept. 30, 2011), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=11-071009308.pdf>. In its Answer and Affirmative Defenses filing, the University of Nebraska at Kearney denied that the FHA is applicable to the defendants and raised as an affirmative defense, "immun[ity] from suit under the [FHA] and under the doctrine of sovereign immunity in the Eleventh Amendment of the U.S. Constitution." Answer and Affirmative Defenses at 4, 11-12, Univ. of Neb. at Kearney, No. 4:11CV03209 (D. Neb. Jan. 12, 2012).

72. *See* Charge of Discrimination, *supra* note 71, at 7. Other commentators have asserted that the FHA applies to student housing without further comment. *See, e.g.,* ROTHSTEIN & ROTHSTEIN, *supra* note 15, § 3:1 (stating that the "Fair Housing Act amendments of 1988 that provide for nondiscrimination on the basis of disability in certain housing are also significant for higher education" and referring the reader to the chapter covering the Fair Housing Act); Michael R. Masinter, *Newly Proposed ADA Rules Define Service Animals, Exclude Emotional Support Animals*, DISABILITY COMPLIANCE FOR HIGHER EDUC., July 1, 2008, at 5 ("However, the regulations leave one enormous gap for residential colleges – they do not apply to the Fair Housing Act. Because the Fair Housing Act extends to campus dormitory housing, DS offices and campus housing offices potentially may operate under significantly different legal schemes for emotional support animals."); *see also* SCHWEMM, *supra* note 15, § 9:2 (stating the FHA would cover places such as college dormitories); Joshua Van Kampen, *The Fair Housing Act's Protection of Children*, GP SOLO & SMALL FIRM LAW., Oct./Nov. 1998, at LN1, LN2 (stating, in the context of determining whether a property would be considered a dwelling under the FHA, that "summer homes, nursing homes, retirement communities, college dormitories, or boarding houses are construed to be dwellings under the FHA").

tion.<sup>73</sup> Specifically, the FHA definition of housing discrimination includes refusing “to make reasonable accommodation in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”<sup>74</sup>

Examples in federal regulations<sup>75</sup> and case law have demonstrated that a reasonable accommodation may include a waiver of a no-pet rule to allow for a service animal.<sup>76</sup> The federal regulations implementing the FHA do not, however, provide a definition of service animal.<sup>77</sup> HUD has provided guidance for determining when animals must be accommodated. In one of its handbooks, HUD has provided the following definition of “assistance animals”:

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability. . . . Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed as a reasonable accommodation by the person with the disability.<sup>78</sup>

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73. 42 U.S.C. § 3604(f)(3)(B) (2006).

74. *Id.* Note that although the FHA requires that the public and common use portions of multifamily dwellings constructed after March 13, 1991, must be handicapped accessible, any reasonable modifications within the unit are at the expense of the disabled person. 24 C.F.R. § 100.203 (2011); *Understanding Your Rights*, DIRECTORY ACCESSIBLE HOUSING, <http://accessiblehousing.org/rights.asp> (last visited Feb. 10, 2012). This provision is in contrast to the Americans with Disabilities Act provision that requires the person with the public accommodation to pay for any reasonable accommodations. *See* 42 U.S.C. § 12111(9)-(10)(B).

75. *See, e.g.*, 24 C.F.R. § 100.204(b) (providing an example of a blind applicant with a seeing eye dog).

76. *See* Rebecca J. Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 ANIMAL L. 69, 75-88 (2005) [hereinafter Huss, *No Pets Allowed*] (analyzing cases discussing waivers of no pet rules); *see also* Christopher C. Ligatti, *No Training Required: The Availability of Emotional Support Animals as a Component of Equal Access for the Psychiatrically Disabled Under the Fair Housing Act*, 35 T. MARSHALL L. REV. 139 (2010) (providing an analysis of the FHA as it relates to emotional support animals).

77. *See* 24 C.F.R. § 100.201.

78. U.S. DEP’T OF HOUS. & URBAN DEV., HUD HANDBOOK 4350.3: OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS Glossary 4 (2009), available at <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/index.cfm> [hereinafter HUD HANDBOOK]. The language of the Handbook addressing

HUD's position on assistance animals was set forth in recent rulemaking in connection with the law that applies to pet ownership in HUD-assisted housing for the elderly and persons with disabilities.<sup>79</sup> In the guidance on that rulemaking, HUD references its position in the guidebook set forth above<sup>80</sup> and reiterates its longstanding position on reasonable accommodation law, under the FHA, that the use of assistive animals is governed by such law.<sup>81</sup> HUD recognized that its regulations differ from the DOJ regulations of the ADA, but articulated reasons why the FHA must cover "emotional support animals" and other animals that may not need training and are not included in the ADA definition of service animal.<sup>82</sup> HUD pointed to the private setting of the home and stated "the needs of persons with disabilities in the housing arena are distinct from other settings."<sup>83</sup>

HUD's administrative decisions have supported its position of allowing an expansive definition of assistance animal.<sup>84</sup> In many situations, tenants

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whether an assistance animal is a reasonable accommodation states the "question is whether or not the animal performs the [disability-related] assistance or provides the [disability-related] benefit needed as a reasonable accommodation by the person with the disability." *Id.* In a memorandum issued on February 17, 2011, HUD's Deputy Assistant Secretary for Enforcement and Programs reiterated that the new ADA regulations on service animals did not impact HUD's interpretation that persons with disabilities could request a reasonable accommodation for assistance animals including emotional support animals under the FHA. Memorandum from Sara K. Pratt, Deputy Assistant Sec'y for Enforcement & Programs to FHEO Region Dirs., Reg'l Counsel (Feb. 17, 2011), [http://www.nacua.org/documents/FHA\\_Memo\\_ServiceAnimals.PDF](http://www.nacua.org/documents/FHA_Memo_ServiceAnimals.PDF).

79. See 42 U.S.C. § 1437; Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63,834 (Oct. 27, 2008) (codified at 24 C.F.R. pt. 5) [hereinafter POEH Final Rule]. This law allows tenants in federally assisted rental housing for the elderly and handicapped to keep one common household pet (including a dog or cat) in their units. 24 C.F.R. § 5.306. The rulemaking was intended to clarify HUD's position on assistance animals (which are excluded from the rules relating to Pet Ownership for the Elderly and Persons with Disabilities and in the law relating to pets in public housing). POEH Final Rule, 73 Fed. Reg. at 63,834; see also Huss, *No Pets Allowed*, *supra* note 76, at 91-97 & nn. 174-229 and accompanying text (analyzing the laws and regulations allowing pets in housing for the elderly and disabled and pets in public housing). The final regulation excludes from the application of the POEH "animals that . . . assist, support, or provide service to persons with disabilities." 24 C.F.R. § 5.303.

80. See *supra* note 78 and accompanying text (defining assistance animal).

81. POEH Final Rule, 73 Fed. Reg. at 63,835. These animals are also referred to as "service animals," "support animals," "assistance animals," or "therapy animals." *Id.* (internal quotation marks omitted).

82. *Id.* at 63,837.

83. *Id.*

84. Note that in states that have laws that are at least as protective as the federal law protecting against discrimination, at HUD's discretion, the cases are referred to the applicable state division of human rights. See 42 U.S.C. § 3610(f).

have been successful in arguing that there should be a waiver of a no-pet rule in order for the tenant to be able to retain an assistance animal, even if the animal does not appear to have been trained to perform specific tasks.<sup>85</sup>

One reason for confusion in this area is that courts interpreting the FHA have not always been as generous in defining assistance animal.<sup>86</sup> The service animal definition found in the ADA regulation has been utilized, in cases interpreting the FHA and many times state courts are being asked to interpret federal law.<sup>87</sup> Two recent cases illustrate decisions by the courts.

An often cited case that applied the ADA's definition of service animal in an FHA case, is the 2006 Ninth Circuit case of *Prindable v. Association of Apartment Owners of 2987 Kalakaua*.<sup>88</sup> In this case, decided prior to the revisions of the ADA regulations that clarified that "service animal" under the ADA and "assistance animal" under the FHA have different definitions, the court found that there was nothing in the record that would lead a reasonable jury to conclude that the dog at issue was an individually trained service animal and granted the defendant judgment as a matter of law in regards to plaintiffs claims under the FHA.<sup>89</sup> Certainly there are situations in which an

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85. See, e.g., Huss, *Service Animals*, *supra* note 32, at 1196 n.226 (citing HUD v. Raczkowski, No. 02-99-0830-8, 2002 WL 1264012, at \*2 (H.U.D.A.L.J. May 23, 2002) (providing a settlement where a payment was made to a tenant who argued that he suffered from a psychiatric disability and that the dog was of "great emotional and social support" for him); HUD v. Bayberry Condo Ass'n, No. 02-00-0504-8, 2002 WL 475240, at \*1-2 (H.U.D.A.L.J. Mar. 21, 2002) (providing in an initial decision and consent order that a resident of a condominium suffering from depression, generalized anxiety, and panic disorder be granted a waiver of a no-pet policy as a reasonable accommodation of her handicap, with such animal being referred to as an "emotional support pet")); see also Huss, *No Pets Allowed*, *supra* note 76, at 81 n.112 and accompanying text (discussing additional HUD consent orders).

86. Not infrequently, state courts have been asked to interpret federal law. See Huss, *No Pets Allowed*, *supra* note 76, at 74-85 (analyzing FHA cases).

87. For more analysis of the various cases interpreting this issue, see Huss, *Service Animals*, *supra* note 32, at 1196-1202.

88. *Prindable v. Ass'n of Apartment Owners*, 304 F. Supp. 2d 1245, 1256 (D. Haw. 2003), *aff'd sub nom. DuBois v. Ass'n of Apartment Owners*, 435 F.3d 1175 (9th Cir. 2006).

89. *Id.* at 1256-57, 1262 (granting the defendant judgment as a matter of law as to "[p]laintiff's claim[s] under the [FHA] for failure to make a reasonable accommodation") *Id.* at 1262. It is important to note that the appellate decision in this case did not analyze the use of the ADA definition of service animal (in a FHA case) but focused its analysis on the finding that the condominium association did not deny the residents' request for a reasonable accommodation. *DuBois*, 435 F.3d. at 1179. "The [c]ondominium [a]ssociation never required [the dog at issue] to leave and thus never refused to make the requested accommodation." *Id.* The appellate court also rejected the residents' arguments for a defamation claim and FHA retaliation claim. *Id.* at 1180-81.

animal may meet the standards defining service animal in an FHA case.<sup>90</sup> The *Prindable* court was correct in articulating the definition of service animal – if the ADA definition is used, however, as subsequent regulatory activities and cases illustrate, the restrictive definition of service animal that requires an animal to be individually trained to do work or perform tasks is just one of the ways that an animal meets the definition of assistance animal under the FHA.<sup>91</sup> Fortunately, given the ongoing activities of HUD and the DOJ this confusion appears to be dissipating.<sup>92</sup>

In the case of *Overlook Mutual Homes, Inc. v. Spencer*, the district court in the Southern District of Ohio distinguished between the ADA and FHA and cited to HUD rules that “declined to limit its regulation on keeping animals to those that have been individually trained.”<sup>93</sup> The *Overlook* court acknowledged that “[a]lthough the revised rule [it cited] applie[d] only to HUD-assisted public housing, the rationale in support thereof is equally applicable to all types of housing regulated by the FHA.”<sup>94</sup> The court concluded by stating “the types of animals that can qualify as reasonable accommodations under the FHA include emotional support animals, which need not be individually trained.”<sup>95</sup>

Although the district court in *Overlook* rejected the housing corporation’s request for summary judgment, the district court entered judgment as a matter of law for the housing corporation based on the fact that the court found that the plaintiffs had “produced insufficient proof that Overlook had actually *denied* their request for a reasonable accommodation.”<sup>96</sup>

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90. State *ex rel.* Henderson v. Des Moines Mun. Hous. Agency, No. 06-1144, 2007 WL 4553350, at \*5-6 (Iowa Ct. App. Dec. 28, 2007) (finding that a dog that was trained to assist an individual with post-traumatic stress disorder by preceding her into rooms, switching on lights, and bringing her cell phone may meet the standard set by the *Prindable* case).

91. *Prindable*, 304 F. Supp. 2d at 1256 (describing test as “individually trained to do work or perform tasks”).

92. See *supra* notes 71, 75-78 (describing the ADA regulatory revisions and HUD and DOJ activity).

93. 666 F. Supp. 2d 850, 859 (S.D. Ohio 2009).

94. *Id.* at 860. The *Overlook* court also referenced action by the DOJ and HUD regarding a cooperative’s restrictive policy that was upheld in a state court that resulted in the cooperative adopting an exception to the no-pets rule that permitted disabled residences to have emotional support animals. *Id.* at 860-61 (discussing a consent decree relating to Kenna Homes Cooperative). “An emotional support animal was defined [in that consent decree] as an animal, the presence of which ameliorates the effects of a mental or emotional disability.” *Id.* at 861 (quoting United States v. Kenna Homes Coop. Corp., No. 2:04-CV-00783, at \*2-3 (S.D. W.Va. Aug. 10, 2004) (consent decree and dismissal order)).

95. *Overlook*, 666 F. Supp. 2d at 861.

96. *Overlook Mut. Homes, Inc. v. Spencer*, 415 F. App’x 617, 620 (6th Cir. 2011). The motion for judgment as a matter of law was granted after the production of evidence at a jury trial. See *id.* The Spencers were unsuccessful in arguing that

There are few reported cases dealing with student requests to have assistance animals in campus housing.<sup>97</sup> Given the rulemaking by HUD and the DOJ since the *Prindable* case, in addition to HUD's long history of utilizing a definition of assistance animal for FHA cases that is different from the definition of service animal under the ADA, it is difficult to argue that in an FHA case an animal must be individually trained. The recent Sixth Circuit decision affirming *Overlook* recognized that there was "at least some dispute in the law" in connection with whether an animal covered under the FHA required training at the time the lawsuit commenced but cautioned housing providers from claiming the law is "unclear" in connection with a delay or obstruction of the accommodation process.<sup>98</sup>

The definition of an assistance animal under the FHA is broader than that of a service animal under the ADA and includes what commonly would be referred to as an emotional support animal. An individual wishing to live with an assistance animal must show that he or she meets the definition of having a handicap and that it is necessary to have the animal in order for the individual to use and enjoy the dwelling.<sup>99</sup> Essentially there must be a nexus between the disability and the need to have an animal in the dwelling.<sup>100</sup> In

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they were the prevailing party for purposes of recovery of attorney's fees and costs. *Overlook Mut. Homes, Inc. v. Spencer*, No. 307cv398, 2012 WL 441143 (S.D. Ohio Feb. 10, 2012).

97. The DOJ's complaint against the University of Nebraska at Kearney, discussed *supra* notes 71-72 and accompanying text, illustrates the broad definition of assistance animal that includes an emotional assistance animal. Bennett J. Loudon, *UR Case Part of Growing Trend*, DEMOCRAT & CHRON. (Rochester, NY), Oct. 22, 2007, at 1A (reporting on a case involving a lawsuit by a student wanting to keep her dog on campus and cases at two other universities that allowed a student to have a dog on campus and two students to have cats on campus respectively). One difficulty is that it is often unclear whether an animal is "only" an assistance animal or would qualify as a service animal under the ADA. *See id.* For example, in one case, although the dog was described in media accounts as an emotional support animal, the student alleged that the dog was trained to nuzzle her when she showed signs of emotional distress – which would qualify as a task under the ADA definition of service animal. Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunctive Relief at 8, *Stamm v. Univ. of Rochester*, No. 07 CV 6474 (W.D.N.Y. Oct. 5, 2007) (on file with author). The student was diagnosed with Major Depressive Disorder and insulin-dependent diabetes. *Id.* at 1. In the *Stamm* case, a temporary restraining order was granted in favor of the student, allowing her to keep her dog on campus. Temporary Restraining Order, *Stamm v. Univ. of Rochester*, No. 07 CV 6474 (W.D.N.Y. Oct. 12, 2007) (on file with author).

98. *Overlook*, 415 F. App'x at 623.

99. POEH Final Rule, 73 Fed. Reg. 63,834, 63,837 (Oct. 27, 2008) (codified at 24 C.F.R. pt. 5) (stating that "in order to qualify as a reasonable accommodation: (1) The requester must have a disability, and (2) there must be a relationship between the requested accommodation and the person's disability"); *see also* Huss, *No Pets Allowed*, *supra* note 76, at 74-75 & nn. 44-50 (analyzing the "nexus" factor).

100. *See* POEH Final Rule, 73 Fed. Reg. at 63,835.

addition, “a housing provider is not required to make a reasonable accommodation if the presence of an assistance animal would . . . pose an undue financial and administrative burden . . . or fundamentally alter the nature of the provider’s operations.”<sup>101</sup>

### 3. Implication of Assistance Animal Definition for Postsecondary Institutions

So what should a postsecondary educational institution administrator do about student requests to keep assistance animals in campus housing? An institution likely would not prevail on an argument that the FHA would not apply to campus housing when used for students during the academic term. Additionally an attempt to utilize a policy that restricts students from having assistance animals in housing only if such animals meet the definition of service animals ignores recent rulemaking and the *Overlook* court’s analysis.<sup>102</sup> An institution does not gain any benefit from being a “test case” in this area. It makes the most sense for administrators to be proactive in this area and develop a policy that meets the requirements of the FHA.<sup>103</sup>

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101. *Id.*

102. *See supra* notes 93-96 and accompanying text. Note that the Supreme Court of North Dakota recently recognized the disagreement among courts on the issue of whether assistance animals must be individually trained, but was not required to make a determination as to how it would rule on the issue in the case before it. *Lucas v. Riverside Park Condos. Unit Owners Ass’n*, 776 N.W.2d 801, 809, 815 (N.D. 2009); *see also Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F. Supp. 2d 1028, 1036 (D.N.D. 2011) (finding in a dispute regarding the imposition of fees on assistance dogs that “the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability”).

103. It is not uncommon for universities to have policies that reflect the difference between service animals and assistance animals, presumably reflecting the prior lack of guidance in this area of the law. *See, e.g.,* Office of Disability Services, *Service Animal Policy*, MUHLENBERG C., <http://www.muhlenberg.edu/pdf/main/aboutus/disabilities/serviceanimal.pdf> (last visited Feb. 15, 2012) (stating that “Muhlenberg College[] is aware of the importance of remaining current with the law(s) regarding admission of therapy [dogs] on college campuses” but “[n]o requests to use a Therapy/Companion/Emotional Support Animal on campus are accepted at this time”). Brigham Young University has a comprehensive policy covering both service and therapy/emotional support animals that would be useful for administrators developing policies for their own institutions. *See Service and Therapy/Emotional Support Animal Policy*, BRIGHAM YOUNG U., [http://www.byu.edu/oncampushousing/agreement\\_info/animal\\_policy.shtml](http://www.byu.edu/oncampushousing/agreement_info/animal_policy.shtml) (last visited Aug. 8, 2011); *see also Procedure for Service Animals at Texas State University – San Marcos*, TEX. ST. U. – SAN MARCOS, <http://www.txstate.edu/effective/upps/upps-07-11-01-att5.html> (last visited Mar. 19, 2012) (providing instructions for students needing an emotional support animal in university housing); *UC Santa Cruz Service Animal Policy*, U. CAL., SANTA CRUZ, 2, <http://police.ucsc.edu/SA0001.pdf> (last visited Feb. 2, 2012) (providing a process for

Such a policy can mirror an institution's existing service animal policy to a large extent. However, administrators should be sensitive to some differences as they deal with issues relating to the FHA.

One complication for administrators is that the definition of assistance animal under the FHA is not restricted by species.<sup>104</sup> Based on prior decisions, it appears that the non-dog species used as assistance animals that would be considered a reasonable modification to a no pets policy could be limited to domesticated animals such as cats or birds, and administrators likely would not be required to modify policies to allow more "exotic" species.<sup>105</sup>

HUD guidance and case law illustrate that documentation may be required to prove the disability and that the animal is necessary for the individual to use and enjoy the dwelling.<sup>106</sup> HUD guidance provides:

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individuals to request an accommodation relating to a support animal); *see also, e.g., Maintain an Open Mind when Evaluating Requests to have Therapy Animals on Campus*, DISABILITY COMPLIANCE FOR HIGHER EDUC., Mar. 1, 2007 (discussing a process of allowing therapy animals in residence halls); *Sell Administrators on Therapy Animals by Explaining Benefits*, DISABILITY COMPLIANCE FOR HIGHER EDUC., Feb. 1, 2007 (stating that "the number of students with psychiatric disabilities [in college] is on the rise and that the number of requests for therapy animals is also growing").

104. *See* POEH Final Rule, 73 Fed. Reg. 63,834, 63,835 (Oct. 27, 2008) (codified at 24 C.F.R. pt. 5).

105. *See* *Janush v. Charities Hous. Dev. Corp.*, 169 F. Supp. 2d 1133, 1134-36 (N.D. Cal. 2000) (discussing tenant with birds); *see also* *LaFore v. Hous. Auth.*, No. CIV. 99-827-JO, 1999 WL 1058992 (D. Or. Nov. 19, 1999). In *LaFore*, the plaintiff alleged claims for housing and disability discrimination and that her disabilities required her to have an opossum as an assistance animal in addition to a dog as a service animal. *Id.* at \*1. The Housing Authority denied plaintiff's claim for "modification [of] the pet policy to permit her to keep the opossum, allegedly on the ground that [o]possums are not domesticated animals and can present some issues because they are not normally inoculated, spayed/neutered and licensed." *Id.* (second alteration in original) (internal quotation marks omitted). The court dismissed the federal claims due to the running of the two-year statute of limitations but remanded the state claims to state court for further proceedings. *Id.* at \*3-4. In another case, a tenant claimed that his snakes were service animals. *Assenberg v. Anacortes Hous. Auth.*, 268 F. App'x 643, 644 (9th Cir. 2008) (finding that the court did not have to address the claim that his snakes qualified as service animals).

106. *See, e.g.,* *Hawn v. Shoreline Towers Phase I Condo. Ass'n, Inc.*, No. 3:07-cv-97/RV/EMT, 2009 WL 691378, at \*7 (N.D. Fla. Mar. 12, 2009) (providing in granting a summary judgment motion for a defendant condominium association that even if there was sufficient evidence to show that an individual was disabled, the plaintiff failed to establish that the board knew an accommodation was necessary given the documentation provided), *aff'd*, 347 F. App'x 464 (11th Cir. 2009); *see also* *Lucas*, 776 N.W.2d at 811 (affirming a district court's summary judgment dismissal of a claim based on the "conclusory and ambiguous" nature of the documents submitted in support of the plaintiff's request for accommodation); *cf.* *State ex rel. Henderson v. Des Moines Mun. Hous. Agency*, No. 09-1905, 2010 WL 4484005, at \*9 (Iowa



[the housing provider] may require the applicant or resident to provide documentation of the disability and the need for the animal from an appropriate third party . . . . For example, if a tenant or applicant seeks a reasonable accommodation for an assistance animal that provides emotional support, that individual may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates one or more of the identified symptoms or effects of an existing disability.<sup>107</sup>

The FHA only requires a reasonable accommodation, but one could argue that it is not reasonable to allow a student to have a particular species of animals in certain types of campus housing.<sup>108</sup> It is a fact-based question, and HUD (or a court applying the more expansive assistance animal definition) is likely to consider the physical structure of the housing as well as the current pet policy of the institution.<sup>109</sup> Arguably, it would be unreasonable for an institution to not allow a student with a disability to keep a cat if it already allows ferrets and other animals. Although a student may try to circumvent a no-pets policy by arguing that he or she is entitled to bring an assistance animal into campus housing, the documentation requirements that HUD allows should discourage fraud.

As with service animals under the ADA, HUD has reiterated that under the FHA, “a person with a disability who uses an assistance animal is responsible for the animal’s care and maintenance” and uses as an example the fact that a housing provider may implement reasonable rules requiring the person

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Ct. App. Nov. 10, 2010) (remanding for a new trial a case under the Iowa Code fair housing provision and concluding that the district court erred in finding the requested accommodation must alleviate the disability, rather than “afford the person equal opportunity to use and enjoy a dwelling” (internal quotation marks omitted) (citing Iowa Code § 216.8A(3)(c)(2))).

107. HUD HANDBOOK, *supra* note 78, § 3-29(B), at 3-73. If a disability or “need is readily apparent or already known to the provider,” the applicant should not be required to provide documentation. *Id.* § 3-29(C), at 3-74.

108. *Maintain an Open Mind when Evaluating Requests to Have Therapy Animals on Campus*, *supra* note 103 (stating as an example “it may not be reasonable to allow a student to house his snake in a shared dorm room even though the snake truly mitigates the effect of a disability – especially if the student is in the habit of letting the snake roam freely”); see Complaint and Request for Jury Trial at 9-10, *Velzen v. Grand Valley State Univ.*, No 1:12-cv-00321-RHB (W.D. Mich. Mar. 30, 2012) (alleging that a college unlawfully refused a student’s request to keep a guinea pig as an emotion support animal in campus housing).

109. It is important to note that a reasonable accommodation is required. For example, if an institution allows animals in one dormitory that is generally limited to upperclassman, it may be required to allow a freshman with a disability to be accompanied by his or her assistance animal in that dormitory.

with the disability to pick up and dispose of the animal's waste.<sup>110</sup> In addition, "a housing provider may exclude an assistance animal from a housing complex when that animal's behavior poses a direct threat and its owner takes no effective action to control the animal's behavior so that the threat is mitigated or eliminated."<sup>111</sup> Again, as with service animals under the ADA, any "determination of whether an assistance animal poses a direct threat must rely on an individualized assessment that is based on objective evidence about the specific animal in question."<sup>112</sup> Finally, an institution allowing a student to have an assistance animal in housing pursuant to the FHA is not required to allow the student to bring the animal into other buildings on campus.<sup>113</sup>

### *C. Other Issues with Service Animals and Assistance Animals*

#### 1. Service Animals in Training

Although not protected under federal law, another way that an animal may be required to be allowed on campus is if such animal meets the definition of a "service animal in training."<sup>114</sup> Several states have "provided that

110. POEH Final Rule, 73 Fed. Reg. 63,834, 63,836-37 (Oct. 27, 2008) (codified at 24 C.F.R. pt. 5).

111. *Id.* at 63,837.

112. *Id.* The direct threat "requires the existence of a significant risk – not a remote or speculative risk" and "the determination cannot be the result of fear or speculation about the types of harm or damage an animal may cause, or evidence about harm or damage caused by other animals." *Id.*

113. *Cf.* Kelly Field, *These Student Requests Are a Different Animal*, CHRON. HIGHER EDUC., Oct. 13, 2006, at A30 (reporting on a student who filed an ADA complaint with the Department of Justice requesting that she be allowed to keep her ferret in her dormitory room). The student was informed that the Department of Justice had reviewed the case and decided against taking action. *Id.* Clearly, the ferret can be excluded under the ADA, as the ferret would not meet the definition of service animal. *See id.* However, if the student is disabled and can show the ferret is necessary for her to use and enjoy the dwelling, the university should consider the accommodation request for the ferret to be kept in campus housing given the recent rulemaking and HUD position on assistance animals.

114. *See* Huss, *Classroom*, *supra* note 12, at 34-35. "There are frequent reports of waiting lists for service animals[, and t]he cost of training a service animal can be considerable." *See generally id.* at 34 nn. 334-35 and accompanying text. Volunteer trainers can be used for "puppy training" consisting of general socialization and obedience or more advanced training. *See, e.g., Foster Home Q & A*, HELPING PAWS, FOSTER HOME TRAINERS, [http://helpingpaws.org/index.php?option=com\\_content&view=article&id=41&Itemid=47](http://helpingpaws.org/index.php?option=com_content&view=article&id=41&Itemid=47) (last visited Aug. 8, 2011) (discussing the training obligation of foster home trainers); *see also* Mary Wade Burnside, *Loved and Needed*, TIMES WEST VIRGINIAN. (Fairmont, Va.), Feb. 15, 2009, <http://timeswv.com/local/x681699475/Loved-and-needed/print> (discussing puppy training program for Pilot Dogs, Inc.); Triveni Sheshadri, *Canine Companions Make a Difference*, SAN DIEGO

service animals in training should be accommodated in the same manner as service animals being used by a person with a disability.”<sup>115</sup> One way states deal with this issue is by adopting a separate statutory section that provides for trainers with the same rights and privileges with respect to access as persons with disabilities.<sup>116</sup> A state may limit service animals in training covered by the statutory provision to handlers from an accredited school for training service animals and may require that the dog be identified as being from an accredited school.<sup>117</sup> Another method for states to provide for access is by including service animals in training in the definition of service animal.<sup>118</sup>

Since the ADA does not cover service animals in training or non-disabled trainers of service animals, whether a person (student or staff) will be allowed to be accompanied by a service animal in training to campus is dependent on state law.<sup>119</sup> Although some universities have resisted allowing service animals in training on campus,<sup>120</sup> at least five educational institutions have programs that support students training service animals.<sup>121</sup>

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UNION TRIB., Feb. 27, 2009, at NC-1 (discussing puppy training for Canine Companions for Independence).

115. Huss, *Service Animals*, *supra* note 32, at 1211.

116. *See, e.g.*, N.J. STAT. ANN. § 10:5-29.3 (West, Westlaw through L.2011, c. 216, 218-232 and J.R. No. 10) (providing that the trainer must be “engaged in the actual training process and activities of service dogs” and has the “same responsibilities as are applicable to a person with a disability”); *see also University of Wisconsin-Madison Service Animal Policy*, U. WIS.-MADISON, <http://adac.wisc.edu/physical/servicedog.html> (last visited Feb. 2, 2012) (referencing the Wisconsin law that allows service animals in training “to be admitted to facilities open to the public”).

117. GA. CODE ANN. § 30-4-2(b)(3) (LEXIS through 2011 Extraordinary Sess.).

118. *See, e.g.*, MO. REV. STAT. § 209.200(2) (Supp. 2010) (defining service dog as “a dog that is being or has been specially trained”); UTAH CODE ANN. § 62A-5b-102(3)(a) (LEXIS, LEXIS through 2011 3d Reg. Sess.) (including in the definition of service animal an animal “in training, to do work or perform tasks for the benefit of an individual with a disability”).

119. Huss, *Service Animals*, *supra* note 32, at 1211 (analyzing the state laws regarding service animals in training); *see also* Huss, *Classroom*, *supra* note 12, at 34-37 & nn. 334-62 (discussing service animals in training in primary and secondary school environments).

120. *E.g.*, Fred Contrada, *Student Suit over Canine Dogs Campus*, THE REPUBLICAN (Springfield, Mass.), Dec. 18, 2009, at C01 (reporting on a case at Hampshire College where a student was not allowed to keep a service dog in training in his dormitory room or to be accompanied by the dog in other areas on campus).

121. Tim Mitchell, *Training of Service Dogs Called First on College Campus*, NEWS-GAZETTE (East Central Illinois), Oct. 18, 2010, <http://www.news-gazette.com/news/social-services/2010-10-18/training-service-dogs-called-first-college-campus.html> (describing a program at the University of Illinois Champagne-Urbana where the Applied Health Sciences Council teamed up with the College of Veterinary Medicine and the nonprofit organization Mid-America Service Dogs’ Foundation to train two seven-month-old puppies as service animals); Chris Newmarker, *Seeing Eye Pups*

## 2. Service Animal Etiquette

One of the simplest ways an institution can provide a more welcoming atmosphere and establish a defense against problems with service animals is to ensure that students and staff at an institution are aware of “service animal etiquette.”<sup>122</sup> Many organizations have set forth minimum standards of behavior when dealing with a person with a service animal.<sup>123</sup> These guidelines essentially provide that one should not distract a service animal. Thus, it is inappropriate to touch, make noises at, or deliberately startle a service animal.<sup>124</sup> Obviously, feeding a service animal is also a distraction and could disrupt the animal’s schedule.<sup>125</sup>

Although not related to distracting the animal, individuals with disabilities may not wish to discuss the assistance a service animal provides, and persons interacting with them should refrain from asking such questions.<sup>126</sup> The basic rule is that one should interact with the individual with a disability, not with the service animal. Service animal etiquette can be included in an institution’s service animal policy;<sup>127</sup> however, the institution must inform all

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*Sent to School: Early Training Prepares Them for Life Serving Blind*, GRAND RAPIDS PRESS, Jan. 23, 2007, at A7 (describing the program at Rowan University that trains dogs for The Seeing Eye and references programs at Rutgers University and the University of Delaware); Joy Juedes, ‘*Helping Paws*’ at U of R, REDLANDS DAILY FACTS (Nov. 25, 2010, 8:52 PM), [http://www.redlandsdailyfacts.com/food/ci\\_16713139](http://www.redlandsdailyfacts.com/food/ci_16713139), (reporting on a program at the University of Redlands); *Special Interest Housing*, RUTGERS HOUSING & RESIDENCE LIFE, <http://ruoncampus.rutgers.edu/living-at-rutgers/special-living-options/special-interest-housing> (last visited Feb. 2, 2012) (describing the special housing available for the Seeing Eye Puppy Raisers on campus).

122. Although the etiquette is defined as “service animal etiquette,” it is etiquette relating to persons with disabilities. See *Service Dog Etiquette*, WORKING LIKE DOGS, <http://www.workinglikedogs.com/service-dog-resources/service-dog-etiquette/> (last visited Jan. 27, 2012) [hereinafter WORKING LIKE DOGS]. Service animal etiquette would be applicable to assistance animals as well. Note that this could also be referred to as public etiquette for interaction with a service animal, as sometimes standards for behavior of the service animal are deemed “service animal etiquette.” *Service Animal Policy and Procedure for the University of Kansas Medical Center*, U. KAN. MED. CENTER, 2, [http://www.kumc.edu/eoo/docs/Service\\_Animals\\_Policy\\_and\\_Procedure.pdf](http://www.kumc.edu/eoo/docs/Service_Animals_Policy_and_Procedure.pdf) (last visited Feb. 2, 2012) [hereinafter *Univ. of Kan. Serv. Animal Policy*].

123. E.g., *ADA Service Animals*, IND. PROTECTION & ADVOC. SERVICES, <http://www.in.gov/ipas/2393.htm> (last visited Jan. 27, 2012) (providing general guidelines from an Indiana government website); WORKING LIKE DOGS, *supra* note 122.

124. *Univ. of Kan. Serv. Animal Policy*, *supra* note 122, at 2.

125. WORKING LIKE DOGS, *supra* note 122.

126. *Id.*

127. See, e.g., *Shenadoah University Service Animal Policy*, SHENADOAH U., [http://www.su.edu/student\\_life/016F2E2BD78543F5893F9BEBF13AE817.asp](http://www.su.edu/student_life/016F2E2BD78543F5893F9BEBF13AE817.asp) (last visited Feb. 2, 2012).

students and staff. One option would be to incorporate this information in orientation activities on campus.

In addition to educating students and staff about service animal etiquette, an institution can provide a more hospitable environment for students with service animals by providing appropriate space for the animals. For example, Wright State University, located in Dayton, Ohio, created a dog park for the service animals on campus.<sup>128</sup>

### III. ANIMAL-ASSISTED ACTIVITY PROGRAMS

It is important to distinguish between service animals, assistance animals, and animals used for Animal Assisted Activities (AAA) and Animal Assisted Therapy (AAT).<sup>129</sup> AAA is more informal, takes place in a variety of environments, and is not targeted at any specific medical condition or person.<sup>130</sup> In contrast, AAT is utilized by a health care or human resources provider, is an integrated part of a treatment process for specific individuals,<sup>131</sup> is used in a wide range of therapies, and is reimbursed by health insurance companies.<sup>132</sup> Additionally, there is a growing trend of college-level training programs offering coursework in the area.<sup>133</sup> One university “employs” a dog raised and trained as a therapy dog that works in the Special Academic Services department and who assists with a graduate student counseling clinic which also services clients from the community.<sup>134</sup> Another university’s

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128. Press Release, Wright St. Univ., Wright State First University in Nation to Create Dog Park Especially for Service Dogs (Oct. 2, 2008), [http://www.wright.edu/cgi-bin/cm/news\\_test.cgi?action=news\\_item&id=1489](http://www.wright.edu/cgi-bin/cm/news_test.cgi?action=news_item&id=1489) (reporting on dog park at Wright State University and stating that “[t]welve to fifteen service dogs are typically living on campus during any given quarter”).

129. See *Animal-Assisted Activities*, DELTA SOC’Y, <http://www.deltasociety.org/Page.aspx?pid=319> (last visited Feb. 2, 2012); *Animal-Assisted Activities/Therapy 101*, DELTA SOC’Y, <http://www.deltasociety.org/Page.aspx?pid=317> (last visited Jan. 27, 2012).

130. See *Animal-Assisted Activities*, *supra* note 129.

131. See *Animal-Assisted Activities/Therapy 101*, *supra* note 129; see also CYNTHIA K. CHANDLER, ANIMAL ASSISTED THERAPY IN COUNSELING 5 (2005) (distinguishing between AAA and AAT).

132. See CHANDLER, *supra* note 131, at 5.

133. See *generally* HANDBOOK ON ANIMAL-ASSISTED THERAPY: THEORETICAL FOUNDATIONS AND GUIDELINES FOR PRACTICE (Aubrey H. Fine ed., 3d ed. 2010) (providing several examples of the use of AAT). An example is equine-assisted physical therapy. See CHANDLER, *supra* note 131, at 10. Equine-assisted physical therapy is often called hippotherapy and appears to be “the leader of animal-related therapeutic modalities” in the United States. *Id.*

134. Maria Baran, *College Kids Go to the Dogs*, USA TODAY, Dec. 8, 2003, at 6D (reporting on a Labrador that works at Alfred University).

counseling department uses an Affenpinscher that “sits in on therapy sessions and spends one-on-one time with students.”<sup>135</sup>

AAT would not cause administrative issues for most college campuses, as they would be part of a structured program. In addition, because the persons with animals used for AAA and AAT are not required to be accommodated in public accommodations or otherwise under federal law, the decision to allow such animals on campus is at the discretion of the administration of the institution.<sup>136</sup>

### A. *Bringing Companion Animals to Campus*

Animal-assisted activities are common at a variety of institutions. These animals (usually dogs) generally are referred to as therapy dogs and the programs often as “pet therapy.”<sup>137</sup> The use of animal-assisted activity programs at colleges, although recent in origin, appears to be growing.<sup>138</sup>

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135. Angela Haupt, *Your Own Personal Canine Medical Helper: Service Dogs Are No Longer Just for the Blind or Hearing-Impaired*, U.S. NEWS & WORLD REP. (Nov. 4, 2010), <http://health.usnews.com/health-news/managing-your-healthcare/diabetes/articles/2010/11/04/your-own-personal-canine-medical-helper>, (reporting on “Ernie” at Penn State University). Depending on Ernie’s role, this may be AAA rather than AAT. See also *Opening: Assistant at Brevard Community College Disability Services Office*, DISABILITY COMPLIANCE FOR HIGHER EDUC., July 6, 2004 (reporting on a facility dog whose primary purpose is to ease students’ stress).

136. Although it is possible that an animal used for AAA and AAT may also serve as a service animal (and thus be protected under the ADA), often the animals used for AAA and AAT are the companion animals of their handlers. See *Service Animal Basics*, DELTA SOC’Y, <http://www.deltasociety.org/Page.aspx?pid=303#Difference> (last visited Jan. 27, 2012).

137. Larry Gordon, *De-Stressing for Success*, L.A. TIMES, Dec. 12, 2010, at 41 (discussing a variety of events designed to reduce student stress, including an event at Pomona College with rabbits as well as dogs). Although the Delta Society prefers that the term “pet therapy” be avoided, it is commonly used in reports on animal-assisted activity programs. See *Animal-Assisted Activities/Therapy 101*, *supra* note 129. The Delta Society notes that the term “pet therapy” should be avoided, as it was previously used to refer to animal behavior programs and is inaccurate and misleading. *Id.* Where possible, this Article will refer to such programs as AAA.

138. See Sheena Delazio, *Furry Friends Give Students Some Love: The Pet Therapy Program Brings Dogs to the University of Scranton Campus to Comfort the Homesick*, TIMES-LEADER (Wilkes-Barre, Pa.), Sept. 23, 2005, at A3 (reporting that the University of Scranton was the first college with such a program); Kathleen Megan, *For Yale Law Students, Four Legged Stress Relief*, HARTFORD COURANT (Conn.), Apr. 2, 2011, [http://articles.courant.com/2011-04-02/news/hc-yale-law-dog-therapy-20110402\\_1\\_therapy-dogs-international-college-students-universities-and-colleges](http://articles.courant.com/2011-04-02/news/hc-yale-law-dog-therapy-20110402_1_therapy-dogs-international-college-students-universities-and-colleges) (discussing new program at Yale Law School and use of programs at a growing number of college campuses); Dan Lewerenz, *School Uses Pets to Reach Students*, THE INTELLIGENCER (Doylestown, Pa.), Sept. 19, 2004, at 8B (stating that “a small but growing number of colleges are recognizing the value of such programs”);

AAA occurs under several circumstances. The dogs may be brought to campus in the aftermath of a traumatic event or in other times of stress for students.<sup>139</sup> One survey found that approximately forty-eight percent of college students had felt overwhelming anxiety at some point in the previous twelve months.<sup>140</sup> Some colleges bring in therapy dogs to help students who are homesick.<sup>141</sup> The period before final exams is also a common time for AAA programs to occur.<sup>142</sup>

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*Dogs Show Students: Exams' Bark Is Worse than Bite*, MSNBC (Dec. 15, 2010), [http://today.msnbc.msn.com/id/40679176/ns/today-today\\_pets\\_and\\_animals/t/dogs-show-students-exams-bark-worse-bite/](http://today.msnbc.msn.com/id/40679176/ns/today-today_pets_and_animals/t/dogs-show-students-exams-bark-worse-bite/) (citing to the president of the American College Counseling Association, who said that “more colleges are embracing the idea [of therapy dogs] as a stress reliever and way to engage students”); see also Anna Rigenbach, *Dogs on Campus Program Brings a Part of Home to School*, EINSIDE (Jan. 25, 2010), <http://einside.kent.edu/?type=art&id=92387> (reporting that after beginning a pet therapy program at one residence hall, the faculty member has been contacted by other departments wanting to participate in the program and other colleges that would like to “duplicate the program and act as research sites”). The “Dogs on Campus” (D.O.C.) Pet Therapy program has been copyrighted. See Rigenbach, *supra*. The idea has spread to the graduate school level, with Yale Law School having a therapy dog available for scheduled appointments. Jill Schachner Chanen, *Opening Statements: Going to the Dogs*, A.B.A. J., Aug. 2011, at 10.

139. See Carolyn Starks, *NIU Misses Comfort of Four-Legged Counselors: Campus Wants Dogs Back on Anniversary of Attack*, CHI. TRIB., Mar. 14, 2008, at 1 (discussing the use of therapy dogs from Animal Assisted Crisis Response that came to campus after a shooting with multiple casualties occurred on campus); Riccki Klaus, *Therapy Dogs on UAHuntsville Campus as Classes Resume*, WHNT NEWS 19 (Feb. 22, 2010), <http://www.whnt.com/news/whnt-uahuntsville-therapy-dogs-022210,0,6982656.story> (discussing the use of therapy dogs on a college campus after a shooting had occurred in a classroom building).

140. AM. COLL. HEALTH ASS'N, AMERICAN COLLEGE HEALTH ASSOCIATION NATIONAL COLLEGE HEALTH ASSESSMENT II, SPRING 2010 REFERENCE GROUP EXECUTIVE SUMMARY 14 (2010), available at [http://www.acha-ncha.org/docs/ACHA-NCHA-II\\_ReferenceGroup\\_ExecutiveSummary\\_Spring2010.pdf](http://www.acha-ncha.org/docs/ACHA-NCHA-II_ReferenceGroup_ExecutiveSummary_Spring2010.pdf). Over thirty percent of college students had “[f]elt so depressed that it was difficult to function” in the previous twelve months, and over sixty percent of college students had “[f]elt very sad” in the previous twelve months. *Id.*

141. Erin Fox, *Sonoma State Welcomes Therapy Dogs to Campus*, SONOMA ST. STAR, Sept. 15, 2010, <http://www.sonomastatestar.com/features/sonoma-state-welcomes-therapy-dogs-to-campus-1.1598761> (bringing in dogs at the beginning of the semester); Jaclyn Messina, *Helping Students Cope with Homesickness: It's a Job that Administrators Are Taking on in Various Ways*, UNIV. BUS., Nov. 1, 2007, at 80 (discussing programs, including one that brings dogs to campus to combat homesickness).

142. Madeline Daniels, *Stressed-out Students' Best Friend – Bringing Dogs to Campus Ahead of Semester Finals is One Way to Help Ease the Academic Pressures of College*, ST. PAUL PIONEER PRESS, Dec. 16, 2010, at B6 (describing a twice-a-year event at Macalester College and the fact that the University of Minnesota also invites therapy dogs to campus twice a year); Ron Devlin, *Not a Ruff Day for KU Students on Eve of Final Exams*, READING EAGLE (Reading Eagle, Pa.), May 4, 2011,

Some of these programs appear to be ad hoc in nature. For example, at one college, three university staff members brought their dogs to campus after being inspired by a “student who lamented that she could always call and talk to her parents but never her dog.”<sup>143</sup> At another university, a faculty member reported that she often brings one of her dogs to class on quiz and exam days.<sup>144</sup> Other programs are implemented after a more formal process.<sup>145</sup>

Some programs use staff members’ animals, although the animals may be required to be certified by outside organizations.<sup>146</sup> Other programs utilize

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<http://readingeagle.com/article.aspx?id=305587> (discussing Kutztown University pet therapy program); Alex Gaterud, *Gone to the Dogs*, STAR TRIB. (Minneapolis, Minn.), May 5, 2011, at 01E (discussing pet therapy events at Minneapolis area colleges); Bill Novak, *Finals Stressing You Out? See the ‘Counseling Canines’*, CAPITAL TIMES (Madison, Wis.), May 3, 2010, [http://m.host.madison.com/mobile/article\\_58f36eee-56c4-11df-a80f-001cc4c03286.html](http://m.host.madison.com/mobile/article_58f36eee-56c4-11df-a80f-001cc4c03286.html) (reporting on an annual Pet Therapy Study Break scheduled for a week before final exams); Jake Palmateer, *Dogs Give Students Reason to Smile Before Finals*, DAILY STAR (Oneonta, N.Y.), May 12, 2010, <http://thedailystar.com/localnews/x433566925/Dogs-give-students-reason-to-smile-before-finals/print> (reporting on an event at the State University College at Oneonta); Debbie Pfeiffer Trunnell, *Cal State Holds Pet Therapy Event*, REDLANDS DAILY FACTS (Dec. 2, 2010, 9:14 PM), [http://www.redlandsdailyfacts.com/rss/ci\\_16765112](http://www.redlandsdailyfacts.com/rss/ci_16765112) (discussing the Pet Away Worries and Stress event at Cal State University).

143. Susan C. Thomson, *Furry Maryville U. Visitors Get Their Licks in – Pet “Therapy” Aids Students*, ST. LOUIS POST-DISPATCH, Sept. 24, 2003, at C8.

144. Baran, *supra* note 134 (reporting on a mathematics lecturer at Western Washington University).

145. See Riggensbach, *supra* note 138 (discussing a grant process to support a feasibility study that was done prior to the implementation of an animal-assisted activities program at Kent State University). A more formal process would be required at many institutions, as it is quite common for there to be a “No Companion Animals in Campus Buildings” policy. See, e.g., *Campus Policy, Animals in the Work Place*, U. TENN., KNOXVILLE, 1, <http://web.utk.edu/~dfinance/docs/Animals%20in%20the%20work%20place%20May%202010.pdf> (last visited Jan. 27, 2012) (providing that no animals, except for service animals and other limited exceptions are allowed in campus buildings).

146. Fran Henry, *Whole Lotta Solace in a Fur Coat: Kent Students’ Worries Fade when Dogs Arrive*, CLEVELAND PLAIN DEALER, Mar. 8, 2008, at E1 (discussing the program at Kent State University, where the dogs are certified as therapy dogs by the Delta Society); Messina, *supra* note 141 (discussing the nationally recognized “Dog Days” program designed by personnel at Susquehanna University (Pa.) that utilizes approximately thirty faculty and staff members who bring their dogs to campus on a weekly basis to help students adjust to college life).



outside organizations that provide animal-assisted activities.<sup>147</sup> Animals from shelters also may be used to “staff” these programs.<sup>148</sup>

The numbers of students these programs impact varies. Administrators on one campus that utilized therapy dogs after a crisis estimated that the dogs came in contact with about 16,000 people on campus.<sup>149</sup> An established program at Kent State University has visited over “4000 students, with constant demand for more.”<sup>150</sup> On another campus, a single event reached about 1000 students,<sup>151</sup> with at least 600 students participating in another event.<sup>152</sup> A two-hour event at a different college attracted nearly 300 students.<sup>153</sup>

Recent academic scholarship illustrated mixed results regarding the impact of these programs. One study was structured to investigate the interest in having an AAA program on campus as “social support for transient stressful periods.”<sup>154</sup> This study noted that, although there had been research on the successful use of pet therapy for managing stress in persons with diverse illnesses and in disaster situations, there had not been reports on the use of pet therapy programs for populations such as college students.<sup>155</sup> The study concluded that there was “[i]nitial support for beginning a pet therapy program

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147. Fox, *supra* note 141 (discussing the use of the Paws and Loving Support organization for an animal assisted activity program at Sonoma State); Trunnell, *supra* note 142 (reporting that pet therapy at Cal State University utilizes dogs from Independent Therapy Dogs, Inc.).

148. Baran, *supra* note 134 (reporting on the use of animals from the Humane Society at a program at the University of Scranton); Julian Cavazos, *Pets Offer Relaxing Study Break for VCU Students*, VICTORIA ADVOC. (Tex.), May 4, 2010, [http://www.victoriaadvocate.com/news/2010/may/04/jc\\_furry\\_friends\\_050510\\_95177/?features](http://www.victoriaadvocate.com/news/2010/may/04/jc_furry_friends_050510_95177/?features) (reporting on the use of animals from a pet adoption center at an event before final examinations at Victoria College).

149. Starks, *supra* note 139 (discussing the use of therapy dogs after a shooting on Northern Illinois University’s campus with multiple casualties).

150. Carol Biliczky, *Dogs on Campus Sniff out Students in Need of Hugs – Volunteers Visit Kent Residence Halls with Goal of Reducing Stress*, AKRON BEACON J. (Ohio), Feb. 16, 2010, at B1 (discussing program that makes regular visits to residence halls).

151. Trunnell, *supra* note 142 (describing an event at Cal State).

152. Palmateer, *supra* note 142 (reporting that 600 students completed a short survey after an event with therapy dogs).

153. Eugene W. Fields, *Dogs Rescue Students from Stress of Finals*, ORANGE CNTY. REG. (Cal.), Dec. 9, 2010, <http://www.ocregister.com/news/dogs-99253-ocprint-finals-students.html> (describing the annual two-hour Furry Friend for Finals event at Chapman University).

154. Kathleen N. Adamle et al., *Evaluating College Student Interest in Pet Therapy*, 57 J. AM. C. HEALTH 545, 545 (2009). The researchers for this study are at Kent State University – one of the universities that has an AAA program. *Id.* Note that the term “pet therapy” is being used to describe this research as that is the term used in the study. *Id.*

155. *See id.* Specifically, college students were deemed to consist of “relatively healthy populations experiencing transient periods of significant stress.” *Id.*

with freshman college students” and that such a program could provide beneficial support for the students.<sup>156</sup> This study posited that “[p]et therapy may be a catalyst to establish new social relationships among college freshman and provide a bridge for the break in attachment from their previous supportive network.”<sup>157</sup>

Another study considered the effects of physical contact with a dog and cat on blood pressure and pulse rate among male and female college students.<sup>158</sup> This research summarized previous work that had found (with some exceptions) that a reduction of “blood pressure ha[d] been reported in most studies following limited contact with a dog.”<sup>159</sup> The study’s results suggested that there would be “relatively minimal changes in blood pressure or pulse rate while the person is interacting with [the] animal”<sup>160</sup> regardless of whether the animal used was a dog or cat in a typical pet therapy program.<sup>161</sup> “[A] small but significant decrease in systolic blood pressure occurred” during the time period immediately after an animal was removed, which the authors found “lend[s] only minor support to the findings by others that contact with a dog or cat lowers blood pressure.”<sup>162</sup>

The authors cautioned that the results of this study should not be generalized to other settings or age groups.<sup>163</sup> The study also referenced “numerous anecdotal reports”<sup>164</sup> that found that persons “in a variety of settings enjoy interacti[on] with companion animals” and concluded that “[t]he benefits of pet therapy may be primarily related to these pleasurable experiences.”<sup>165</sup>

Although this study found little support for these purported health benefits of an AAA program, it distinguished between short-term exposure to a non-owned animal and long-term ownership of a companion animal.<sup>166</sup> It

156. *Id.* at 547.

157. *Id.* The researchers acknowledged that there were several limitations for the study and reported that based on the initial findings, a pet therapy program with visitation to residence halls had been initiated. *Id.*

158. See John W. Somerville et al., *Physiological Responses by College Students to a Dog and a Cat: Implications for Pet Therapy*, 10 N. AM. J. PSYCHOL. 519, 519, 523 (2008). The aspect of the animal-assisted activity that was the focus of this study was possible differences in the physiological effects based on the species of animal used in the therapy. *Id.* at 519.

159. *Id.* at 521.

160. *Id.* at 527.

161. *Id.*

162. *Id.* at 526. The study found that “females did show a decrease in systolic blood pressure and a higher pulse rate during the time period after holding the animal.” *Id.*

163. *Id.* at 527.

164. *Id.*

165. *Id.*

166. *Id.* It provided an analogy to “the difference between raising your own child [and] a short visit by someone else’s child.” *Id.*

referenced “the positive, long[-]term cardiovascular benefits associated with pet ownership [that] affect survival and general cardiovascular health” discussed below.<sup>167</sup>

### B. Visiting Companion Animals

Even in the absence of a formal program,<sup>168</sup> companion animals can find their way onto campuses. Some colleges use a companion animal as their mascot. Colleges may utilize animals from the community to act as their mascot or have an animal owned by the college (although the animal may be housed and cared for outside of the college) as their mascot.<sup>169</sup>

Some campuses are more open to having visiting animals on campus. The limited number of colleges that allow cats and dogs in dormitories typically do not allow visiting pets to stay overnight.<sup>170</sup> Generally, the only indoor buildings in which the pets are allowed are the designated dormitories.<sup>171</sup>

One institution with a culture of allowing pets on campus is the Maryland Institute College of Art (MICA) located in Baltimore, Maryland.<sup>172</sup> Pets are not allowed in the dormitories at MICA, but dogs<sup>173</sup> mostly are allowed

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167. *Id.*; see *infra* notes 191-98 and accompanying text (discussing studies showing benefits from living with companion animals).

168. This Article discusses animal-assisted activity programs on campuses in multiple locations. See *supra* notes 137-67 and accompanying text; *infra* notes 169-72 and accompanying text.

169. Mary Ann Albright, *BIG Buddy*, THE COLUMBIAN (Vancouver, Wash.), Dec. 31, 2010, at D1 (discussing “Buddy,” a Newfoundland that acts as mascot for Lewis & Clark College who typically visits campus about once a month).

170. See *Eckerd College Pet Policy*, ECKERD C., <http://www.eckerd.edu/housing/petlife/petpolicy.php> (last visited Jan 19, 2012) [hereinafter ECKERD C.] (providing that visiting pets may not stay overnight unless there has been prior approval granted by the pet council); *Washington & Jefferson College Pet House Manual and Pet Registration Form*, WASHINGTON & JEFFERSON C., 1, <http://www.washjeff.edu/sites/default/files/uploadedfiles/residencelife/PetPolicyManualandForms.pdf> (last visited Jan. 28, 2012) [hereinafter WASHINGTON & JEFFERSON C.] (providing that visiting pets are only allowed in the designated dormitory and are not allowed to stay overnight); *infra* Part IV (discussing policies of pet-friendly schools).

171. WASHINGTON & JEFFERSON C., *supra* note 170, at 1 (limiting pets to the dormitory).

172. Mikita Brotzman, *Teachers’ Pets*, CHRON. HIGHER EDUC., Jan. 9, 2004, at B5 (discussing the “long tradition of allowing pets on campus”).

173. *Id.* (reporting that mostly dogs visit campus, although at least one student has brought a ferret and another a hedgehog to campus). Current policy would not allow the ferret or hedgehog on campus unless pre-approved for a class project. *MICA Pet and Animal Policy*, MD. INST. C. ART, [http://www.mica.edu/Documents/Policies/pet\\_policy.pdf](http://www.mica.edu/Documents/Policies/pet_policy.pdf) (last visited Jan 28, 2012).

into campus locations.<sup>174</sup> Not surprisingly, food service areas and galleries are off limits to animals, along with “[a]ny room with a ‘no pets’ sign,” but pets generally are allowed in classrooms.<sup>175</sup>

Before bringing a pet to campus, the student or staff member must register the pet.<sup>176</sup> Essentially, a “personal interview” for the animal is required, as the pet must be brought to the Environmental Health and Safety (EHS) office along with certain required forms.<sup>177</sup> A health form executed by a veterinarian is required that verifies the pet has had designated vaccinations, has been tested for parasites, and is generally in good health.<sup>178</sup> MICA’s pet policy also requires the execution of a pet liability waiver that contains an indemnification provision to protect the school and a waiver of any damages relating to the injury or loss of the pet.<sup>179</sup>

Complaints about any pets are to be brought to the attention of the EHS manager or campus safety, and in the past a student has been asked to stop bringing his dog into campus buildings because the dog made some students and staff members uncomfortable.<sup>180</sup> Acceptable behavior, including requiring the animals always to be leashed, also is set forth in the pet policy.<sup>181</sup>

### C. Going to the Companion Animals

If companion animals are not allowed on campus, students still can get the benefit of having contact with animals and help animals at the same time. Many shelters and rescue organizations welcome student volunteers, whether on a regular basis or for specific events.<sup>182</sup>

174. Brottman, *supra* note 172; see *Pets*, MD. INST. C. ART, [http://www.mica.edu/About\\_MICA/Policies\\_and\\_Handbooks/Additional\\_Policies/Pets.html](http://www.mica.edu/About_MICA/Policies_and_Handbooks/Additional_Policies/Pets.html) (last visited Jan 28, 2012) [hereinafter *MICA Pet Policy*].

175. *MICA Pet Policy*, *supra* note 174.

176. *Id.*

177. *See id.* A photo of the pet is taken during the registration process. *Id.*

178. *MICA Veterinarian Verification Form*, MD. INST. C. ART, [http://www.mica.edu/Documents/Policies/pet\\_verification.pdf](http://www.mica.edu/Documents/Policies/pet_verification.pdf) (last visited Jan. 28, 2012).

179. *MICA Pet Liability Waiver*, MD. INST. C. ART, [http://www.mica.edu/Documents/Policies/pet\\_waiver.pdf](http://www.mica.edu/Documents/Policies/pet_waiver.pdf) (last visited Jan. 28, 2012).

180. Brottman, *supra* note 172 (reporting on a student asked to stop bringing his large, unneutered, aggressive dog to campus); *MICA Pet Policy*, *supra* note 174.

181. *MICA Pet Policy*, *supra* note 174.

182. *E.g.*, Eric Hoover, *Animal Housing*, CHRON. HIGHER EDUC., Sept. 12, 2003, at A31 (reporting that about 200 student volunteers from the University of Illinois at Urbana-Champaign regularly assist at a local humane society); Rachel Milani, *Rohnert Park Animal Shelter Serves Local Community and Students*, SONOMA ST. STAR (Cal.), Sept. 15, 2010, <http://www.sonomastatestar.com/features/rohnert-park-animal-shelter-serves-local-community-and-students-1.1598769> (encouraging volunteering at the shelter); see Allyson Shaw, *Abandoned Animals Increase at End of Semester*, UNIV. DAILY KANSAN (Student Newspaper of the University of Kansas, Lawrence,

University administration does not have to be involved actively in the volunteering process. For example, a student-led community service initiative at Savannah College of Art and Design provides the opportunity for students to work with the local humane society to socialize with dogs and cats.<sup>183</sup>

A college can encourage this type of activity by incorporating it into a service learning class. Students at Black Hills State University located in Spearfish, South Dakota, may enroll in a class called “Service Learning: Animal Behavior.”<sup>184</sup> As part of the course, the students volunteer for three hours a week at the local humane society.<sup>185</sup> The student volunteers may do a variety of tasks at the local humane society, including training dogs and working on behavior to make them more adoptable.<sup>186</sup> The instructor and students acknowledge that because the time they spend with the dogs is limited, not all behavioral problems can be solved; however, even working on basic issues can help a dog make a transition to a new home.<sup>187</sup>

Another university has taken the process further by providing for a kennel on campus for dogs from a local shelter to be housed and having students spend a semester-long class training them.<sup>188</sup> Students in the course at Becker College in Worcester, Massachusetts, are expected to spend forty-five minutes a day in independent work and exercises relating to the program.<sup>189</sup> In addition to the hands-on work, the course covers “human[-]animal bonding, pet-owner counseling[,] and assistance dogs.”<sup>190</sup>

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Kan.), Dec. 5, 2010, <http://www.kansan.com/news/2010/dec/05/abandoned-animals/> (encouraging students to volunteer rather than adopt animals from the shelter).

183. *Service Opportunities for Students*, SAVANNAH C. ART & DESIGN, <http://www.scad.edu/life/student-involvement/service.cfm> (last visited Jan. 28, 2012) (providing several different service opportunities for students, including the “pet project”).

184. Lynn Taylor Rick, *BHSU Class Helps Rehabilitate Dogs for Adoption*, RAPIDS CITY J., Oct. 8, 2010, [http://rapidcityjournal.com/news/article\\_ababe116-d27a-11df-b4bc-001cc4c03286.html](http://rapidcityjournal.com/news/article_ababe116-d27a-11df-b4bc-001cc4c03286.html) (discussing course at Black Hills State University).

185. *Id.*

186. *Id.*

187. *See id.*

188. Kim Ring, *Finding Homes a Tricky Business: Dogs Trained in Becker Program Show Off Skills at Pet Fest*, WORCHESTER TELEGRAM & GAZETTE (Ma.), Dec. 4, 2006, at B1 (describing a program at Becker College for students in the animal care and veterinary technician programs).

189. *Animal Care Curriculum, Dog Obedience*, BECKER C., <http://www.becker.edu/academics/departments-programs/animal-science/as/curriculum#ansc2200> (last visited Jan. 28, 2012).

190. *Id.*; *see also Animal Care (Associate’s Degree)*, BECKER C., <http://www.becker.edu/pages/268.asp> (last visited Jan. 28, 2012) (describing the program and facilities, which include an on-campus veterinary clinic and visits to boarding kennels).

For some students, though, being separated from their companion animals is not an option, even when heading to college. Having animal-assisted activities or the opportunity to volunteer is no substitute for living with their companion animal on campus.

#### IV. COMPANION ANIMALS IN RESIDENTIAL BUILDINGS

A number of studies have considered the impact of companion animals on human health.<sup>191</sup> Some research has established that physical contact with companion animals has a calming effect on people.<sup>192</sup> Other studies have found no correlation between pet ownership and health benefits.<sup>193</sup> There appears to be greater support for the theory that pet ownership may have health benefits for particular demographic groups, such as young children, the elderly or people suffering from particular illnesses or loneliness.<sup>194</sup>

Regardless of whether any demonstrable proof of measureable health benefits relating to pet ownership exists, studies show it is a widely held belief.<sup>195</sup> Pet owners report that they believe pets relieve stress and are good for their health and the health of other human family members.<sup>196</sup> One study posits that “the belief that a pet improves one’s health is a coping mechanism of note and that this belief, *per se*, may convey health benefits.”<sup>197</sup> In addition, for the general population and for persons with disabilities, “animals

191. See generally *COMPANION ANIMALS IN HUMAN HEALTH* (Cindy C. Wilson & Dennis C. Turner eds., 1998) (discussing a variety of studies done on the impact of companion animals on human health); *Library: Health Benefits of Animals for Adults*, DELTA SOC’Y, <http://www.deltasociety.org/Page.aspx?pid=332> (last visited Jan. 28, 2012) (listing articles that report on studies of the benefits of animals to the health of adults).

192. Aaron H. Katcher, *How Companion Animals Make Us Feel*, in *PERCEPTIONS OF ANIMALS IN AMERICAN CULTURE* 113, 120 (R.J. Hoage ed., 1989) (discussing how visual and physical contact with animals induces calm).

193. Sara Staats et al., *Teachers’ Pets and Why They Have Them: An Investigation of the Human Animal Bond*, 36 *J. APPLIED SOC. PSYCHOL.* 1881, 1882 (2006) (reviewing mixed results of research in this area); Hal Herzog, *Fido’s No Doctor. Neither is Whiskers*, *N.Y. TIMES*, Jan. 4, 2011, at A21 (discussing studies that did not find health benefits relating to pet ownership).

194. Staats et al., *supra* note 193, at 1882.

195. *Id.* at 1889.

196. APPA, *supra* note 1, at 49 (reporting that sixty-seven percent of dog owners and sixty percent of cat owners say that a benefit of ownership is relaxation and stress relief, and that sixty-three percent of dog owners and thirty-nine percent of cat owners report that they believe that the animals are “[g]ood for my health or my family’s health”). Another study of university faculty members found that most faculty “reported some degree of belief that pets are beneficial to their health.” Staats et al., *supra* note 193, at 1889.

197. Staats et al., *supra* note 193, at 1889.

seem to improve social interactions and promote social happiness and harmony.”<sup>198</sup>

“[T]here has been limited research concerning the reasons . . . adults choose to own pets.”<sup>199</sup> The most popular pets are dogs and cats.<sup>200</sup> Pet ownership is highest among persons who are married, followed by persons who are divorced, widowed, and never married.<sup>201</sup> The type of housing an individual lives in also relates to pet ownership. Persons who own a home are more likely to own a pet than those who rent.<sup>202</sup> Of course it is impossible to know whether persons who rent would own animals if allowed to do so. One study found that thirty-five percent of people without a pet would keep a pet if their rental housing allowed animals.<sup>203</sup> Financial constraints also limit the ability of persons renting to have a pet.<sup>204</sup>

Although “traditional” college students who are young, single, and have limited incomes do not fall within the categories of persons most likely to have a companion animal, some of these students still want to bring pets to campus. The vast majority of postsecondary institutions prohibit companion animals in their housing, although many campuses allow students to keep aquariums of limited size with fish.<sup>205</sup>

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198. Sarah J. Brodie et al., *An Exploration of the Potential Risks Associated with Using Pet Therapy in Healthcare Settings*, 11 J. CLINICAL NURSING 444, 445 (2002).

199. Staats et al., *supra* note 193, at 1889.

200. *Id.* at 1883, 1886.

201. AVMA, *supra* note 1, at 5.

202. *Id.*

203. Michelle Cobey, *Pets in Housing Resources*, DELTA SOC’Y, <http://www.delta-society.org/Page.aspx?pid=491> (last visited Jan. 28, 2012) (discussing a study by the National Council on Pet Population and Policy).

204. *No Pets Allowed?*, RENTAL HOUS. ON LINE, <http://www.rhol.com/rental/pets.htm> (last visited Jan. 28, 2012). Fees relating to pets will differ based on the housing market, but one source reports that flat pet fees range from \$20 to \$700, with monthly surcharges from \$6 to \$25. *Id.* The average flat fee is around \$225, usually with higher fees for larger dogs. *Id.* The fee most often quoted is \$100. *Id.* This site also reports that the Humane Society of the United States estimates that although 49.4% of U.S. renters have pets, only five percent of rental housing allows animals. *Id.*

205. *E.g.*, *Residence Life and Housing Services, What to Bring?*, W. CHESTER U. PENN., [http://www.wcupa.edu/\\_services/stu.lif/whattobring.asp](http://www.wcupa.edu/_services/stu.lif/whattobring.asp) (last visited Jan. 28, 2012) (prohibiting all animals, including fish); *Residential Life, Frequently Asked Questions*, VALPARAISO U., <http://www.valpo.edu/reslife/faq/index.php> (last visited Jan. 28, 2012) (stating that the only pets allowed in residential housing are fish); *Student Manual – University Policies and Regulations*, U. CHI., <http://studentmanual.uchicago.edu/student/index.shtml#house> (last visited Jan. 28, 2012) (providing that the only exception to the no pet policy for students is fish in small aquariums).

The number of colleges with more generous policies is increasing.<sup>206</sup> Although the number may be growing, it remains low, with one estimate at only twelve schools allowing pets other than certain small animals and fish.<sup>207</sup> An administrator stated that cats and small animals were allowed in one wing of one dormitory so “students can bring a little piece of home with them.”<sup>208</sup> At one of the most pet-friendly schools, one administrator explained that the reason for the generous policy is to help students feel comfortable with the transition to college.<sup>209</sup> However, an expert has questioned whether bringing a pet to college could slow the transition for some students and could “serve as a Band-Aid on what could be a more serious mental health problem, like depression.”<sup>210</sup> Students report social benefits of having animals, such as allowing them to meet friends and draw visitors to their rooms.<sup>211</sup>

One report states that another institution’s decision to allow cats in specified dorms was “instituted as a compromise while cracking down on students who harbor a menagerie of other animals.”<sup>212</sup> Another reason for allowing

206. Tracy Jan, *MIT Students Take on Some Furry Roommates*, BOS. GLOBE, Sept. 9, 2008, at A1 (reporting on the number of pet-friendly schools and citing to a spokesman for the National Association of Independent Colleges and Universities); Sharon L. Peters, *My Roommate Has 4 Legs!; It’s Not a College Horror Story, Just a Dorm with Pets*, USA TODAY, Sept. 24, 2008, at 7D (reporting on colleges allowing pets in dormitories). Often the ability to have a pet is dependent on the type of housing. The focus of this Article is on “traditional” undergraduate housing for single students. It is not uncommon for a campus to have a more generous pet policy in family and graduate housing. See, e.g., *University Housing, Apartment & Family Housing, Pet Policy*, U. IDAHO, <http://www.uidaho.edu/universityhousing/communities/apartmentfamilyhousing/Pet%20Policy%20page> (last visited Jan. 28, 2012) (allowing cats, birds, and fish only in apartment and family housing that is restricted to older or married students or other specified categories of students); *University Housing, Family and Graduate Housing, Pet Policy and Agreement*, U. ILL. URBANA-CHAMPAIGN, [http://www.housing.illinois.edu/Visitors/~media/Files/Contracts\\_Leases\\_Forms/Apartments/Ashton\\_Woods\\_Pet\\_Addendum.ashx](http://www.housing.illinois.edu/Visitors/~media/Files/Contracts_Leases_Forms/Apartments/Ashton_Woods_Pet_Addendum.ashx) (last visited Jan. 28, 2012) (allowing common household pets, with a weight limit and breed restrictions).

207. Jacques Steinberg, *Colleges Extend the Welcome Mat to Students’ Pets*, N.Y. TIMES, June 6, 2010, at A16 (estimating that twelve colleges allow pets); see also Ryan Lytle, *Bring Your Pet to College*, U.S. NEWS & WORLD REP. (May 19, 2011), <http://www.usnews.com/education/best-colleges/articles/2011/05/19/bring-your-pet-to-college> (discussing pet policies at several colleges).

208. Hoover, *supra* note 182 (quoting the SUNY Canton’s housing coordinator) (internal quotation marks omitted).

209. *Stetson U to Open Pet-Friendly Residence Hall*, STETSON U., (Feb. 12, 2010, 3:06 PM), <https://www.stetson.edu/secure/apps/wordpress/?p=15013> [hereinafter STETSON U.] (announcing the opening of a pet-friendly residence hall in the Fall 2010 Semester).

210. Steinberg, *supra* note 207 (quoting Dr. Harold Koplewicz, a psychiatrist who specializes in children and adolescents).

211. Jan, *supra* note 206.

212. *Id.*



companion animals is financial, to encourage animal loving students to live on campus rather than in off-campus housing.<sup>213</sup> One administrator acknowledged that “in an increasingly competitive recruiting market for top students, becoming known as pet-friendly is another way for a college to differentiate itself.”<sup>214</sup>

The level of how pet-friendly a college is varies widely. Companion animals in campus housing can be divided into several categories. This section will begin with the animal friendly policy that is most common – one that allows for very small animals to be kept in dormitory rooms.

### A. *Small Animals Only*

Some schools allow students to keep small animals that can be kept in cages in campus housing.<sup>215</sup> These “pocket pets” could include guinea pigs, hamsters, gerbils, and other rodents. The percentage of U.S. households containing small animals and reptiles has remained relatively steady over the past few decades at around four percent for small animals and reptiles.<sup>216</sup>

Vassar College in Poughkeepsie, New York, illustrates this type of pet policy, stating “[p]ets are not permitted in residences, except for those of a size that can be humanely kept in an aquarium/cage not larger than 20 gallons 24 hours a day.”<sup>217</sup> As expected, “[a]ll roommates must agree” to having the pet in the room, and “[p]oisonous pets are not permitted.”<sup>218</sup> Harvey Mudd College in Claremont, California, also allows small pets in cages or tanks.<sup>219</sup>

213. Janese Heavin, *Dorm Gives Pets Space at Stephens*, COLUMBIA DAILY TRIB. (Columbia, Mo.), May 8, 2010, at A10 (reporting that Stephens College was reopening a dormitory in response to an increased demand for rooms that allow pets); Peters, *supra* note 206 (reporting that students living off campus “bites into colleges’ housing income”).

214. Steinberg, *supra* note 207 (quoting the President of Stephens College, Diane Lynch).

215. *Residential Life, Student Handbook*, KAN. ST. U., [http://housing.k-state.edu/reshalls/reslife\\_handbook.php#RHPolicies](http://housing.k-state.edu/reshalls/reslife_handbook.php#RHPolicies) (last visited Jan. 28, 2012) (follow “Pets” hyperlink under “Residence Hall Policies”) (providing that students need permission prior to bringing pets to their dorm rooms); see Suzanne Perez Tobias, *K-State Dorms Let Kids Keep Critters*, WICHITA EAGLE (Wichita, Kan.), Sept. 6, 2010, at 1A (reporting that Kansas State allows students a wide array of animals but not dogs, cats, or other animals that are “not accustomed to containment”).

216. APPA, *supra* note 1, at 4. In contrast, birds are part of slightly fewer households than a few years ago, with the percentage of households containing a bird at five percent. *Id.*

217. *Office of Residential Life, Pets*, VASSAR C., <http://residentiallife.vassar.edu/guide/services/pets.html> (last visited Jan. 28, 2012).

218. *Id.*

219. *Pet Registration*, HARVEY MUDD C., <http://www.hmc.edu/studentlife1/ashmc1/committees1/dac1/policies1/pets.html> (last visited Jan. 28, 2012) [hereinafter *Pet Registration*, HARVEY MUDD].

Harvey Mudd College's policy references that the "pets must be properly contained and well cared for" and requires registration of the pets.<sup>220</sup>

### B. Limited to Fraternity or Sorority Houses

Another type of housing that students utilize is a fraternity or sorority house. Ownership of this type of real property differs among campuses. Some houses are owned and regulated by the university.<sup>221</sup> Other fraternity and sorority houses are owned by the national organization, a private corporation, or a local landlord.<sup>222</sup>

LeHigh University in Bethlehem, Pennsylvania, owns the majority of the fraternity and sorority houses affiliated with the school and allows a max-

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220. *Id.*

221. See, e.g., *Special Prosecutor Asked in Rape Case*, ARK. BLOG, (Oct. 27, 2009, 12:49 PM), <http://www.arktimes.com/ArkansasBlog/archives/2009/10/27/special-prosecutor-asked-in-rape-case> (stating that a fraternity house under investigation was owned by the University of Arkansas); *WVU Health and Safety Hosts Fraternity Fire Academy*, W. VA. U., (Sept. 8, 2009), <http://wvutoday.wvu.edu/n/2009/09/08/wvu-environmental-health-and-safety-hosts-fraternity-fire-academy> (discussing the maintenance of the six fraternity houses leased and one fraternity house owned by West Virginia University); see *infra* note 223 (regarding the ownership of most of the fraternity and sorority houses by Lehigh University). If owned or leased by the institution, often the Greek residences follow the same or similar rules as in other types of campus housing. See Sherry Saaverdra, *Two SDSU Frats Are Ousted for Violations: Alcohol, Hazing Incidents Are Cited*, SAN DIEGO UNION-TRIB., May 23, 2008, at B-1 (discussing the rules applicable to fraternities and stating that the fraternity houses were owned by their alumni associations, while apartments were owned and leased by a university auxiliary); Marli Riggs, *WVU-Owned Frats Play by University Rules*, DAILY ATHENAEUM (Feb. 11, 2009), <http://www.thedaonline.com/wvu-owned-frats-play-by-university-rules-1.705066> (discussing rules applicable to Greek houses at various colleges and quoting the president of one fraternity who stated that it was not traditional for the houses to be owned or leased by West Virginia University).

222. *Bar Fails to Prove Minor Not Served Alcohol*, HOSPITALITY L., July 1, 2007 (stating that a fraternity house was owned by a corporation); *College Student Dies After 80-Foot Fall Near Frat House*, PREMISES LIAB. REP., June 2009, at 12 (stating that the fraternity "property was owned by the local chapter of the fraternity"); Doug Belden & Mara H. Gottfried, *U Frats Go Dry After Third Sex Assault*, ST. PAUL PIONEER PRESS (Minn.), Oct. 5, 2010, at A1 (reporting that fraternity houses at the University of Minnesota are privately-owned); Melissa Lee, *More NWU Greek Houses Get Sprinklers*, LINCOLN J. STAR (Neb.), Aug. 28, 2009, at B1 (discussing university-owned Greek houses and privately-owned Greek houses); *Fraternity Sued for Multiple Rapes*, UPI (July 22, 2009), [http://www.upi.com/Top\\_News/2009/07/22/Fraternity-sued-for-multiple-rapes/28491248285029](http://www.upi.com/Top_News/2009/07/22/Fraternity-sued-for-multiple-rapes/28491248285029) (reporting that the alumni association of the fraternity owns the house where allegedly criminal activity occurred); Pat Sangimino, *Last Call on College Drinking*, HUTCHNEWS.COM, (Nov. 19, 2010, 3:51 PM), <http://www.hutchnews.com/Print/underage-drinking-edit> (reporting that a fraternity house in Lawrence, Kansas, is owned by the national chapter).

imum of one cat or dog in each house.<sup>223</sup> A student must submit a written request to house the animal at the fraternity or sorority and, if his or her request is granted, must register the dog or cat.<sup>224</sup> The “[b]reed and size of dogs must be discussed in length and approved,” and the dog “must be housebroken and of a temperament suitable to college life.”<sup>225</sup> If the student wishes to house a cat at a fraternity or sorority, the cat “must be domesticated for indoor living.”<sup>226</sup> The school has rules restricting the animal, such as only allowing the cat or dog in a common area if a human member of the house is with him or her.<sup>227</sup>

If there is a violation of the rules, the owner will first receive a warning letter, with a second violation resulting in the removal of the cat or dog from the house.<sup>228</sup> All of the members of the house are affected by an irresponsible owner because if a cat or dog “is removed from a house for any reason, the house will lose the privilege to have a pet for a minimum of four years.”<sup>229</sup>

### C. Focus on Felines

A few universities have policies that allow cats to be kept in campus housing.<sup>230</sup> The Massachusetts Institute of Technology (MIT) policy allowing students to keep cats in selected housing units serves as an example of this approach.<sup>231</sup> This policy limits pets to one cat per room.<sup>232</sup> There is an application process, and permission must be granted prior to a student bringing a cat into student housing.<sup>233</sup> In order to prevent “switches” of one cat for another cat, students must submit photos of the registered cat.<sup>234</sup> Veterinary

223. *Fraternities and Sororities, Frequently Asked Questions*, LEHIGH U., <http://www4.lehigh.edu/housing/greek/faq.aspx> (last visited Jan. 28, 2012); *Lehigh University Pet Policy*, LEHIGH U., 1, <http://www.lehigh.edu/~indost/greek/PDFs/Pet%20Policy.pdf> (last visited Jan. 28, 2012) [hereinafter *Lehigh Pet Policy*].

224. *Lehigh Pet Policy*, *supra* note 223.

225. *Id.*

226. *Id.* Presumably this provision is intended to ensure that a cat is litter box trained.

227. *Id.*

228. *Id.* at 2.

229. *Id.*

230. *Massachusetts Institute of Technology Undergraduate Housing Cat Policy*, MASS. INST. TECHNOLOGY, 1, <http://web.mit.edu/dormcon/pets/petpol.pdf> (last visited Jan. 29, 2012) [hereinafter MIT]; *The Pet Wing: Member Contract*, ST. U. N.Y., CANTON, 1, [http://www.canton.edu/residence\\_life/pdf/pet\\_contract.pdf](http://www.canton.edu/residence_life/pdf/pet_contract.pdf) (last visited Jan. 28, 2012) [hereinafter SUNY CANTON PET POLICY] (allows cats as well as other small pets in a designated wing of a dormitory).

231. See MIT, *supra* note 230, at 1.

232. *Id.* SUNY Canton has a limit of one cat per room. SUNY CANTON PET POLICY, *supra* note 230, at 1.

233. MIT, *supra* note 230, at 1.

234. See *id.*

records showing that the cat is sterilized and up to date on vaccinations also are required.<sup>235</sup>

MIT's policy emphasizes that the owner of a cat is responsible for any damage caused by the cat, whether it be property damage or personal injuries.<sup>236</sup> Another school's prior policy provided for a \$200 fee per cat to cover the cost of damage caused by the cat, with the owner being responsible for payment if damages exceeded that amount.<sup>237</sup> MIT's policy includes an administrative process that will be used in the event there is a breach of the rules that may result in requiring removal of the cat.<sup>238</sup> MIT also addresses the issue of a student bringing a cat or other animal into a dormitory without permission by providing for removal of the animal.<sup>239</sup>

A university's policy may reference the need to be concerned about the impact of the cat on other students.<sup>240</sup> At MIT, a student wishing to keep a cat must obtain the consent of all his or her floor mates,<sup>241</sup> and in another school's prior policy, the "other Residents of the housing unit must agree with the introduction of [the] cat into that unit."<sup>242</sup>

As with policies regarding other pets, a policy can require that the cat cannot be a nuisance by making noise that would disturb other persons during the day or night.<sup>243</sup> A policy also could require that cats outside the resident's unit must be under complete physical control and on a leash or confined in a carrier.<sup>244</sup>

A university's policy can take into account the care of the cat.<sup>245</sup> MIT's policy states that the "[o]wner shall provide proper care for the cat including regular feeding and grooming."<sup>246</sup> An interesting aspect of a previous policy

235. *Id.* at 1-2 (providing an exception from sterilization for the period of time a cat is too young to be sterilized but requiring sterilization at a time specified by a veterinarian); SUNY CANTON PET POLICY, *supra* note 230, at 1-2 (listing vaccinations required for cats and ferrets and requiring sterilization of all pets if the procedure is available for the animal).

236. MIT, *supra* note 230, at 2-3.

237. *Caltech Housing Cat Policy 2010-2011*, CALTECH DEPARTMENT INST. HOUSING, [http://www.housing.caltech.edu/cat\\_policy.asp](http://www.housing.caltech.edu/cat_policy.asp) (last visited Jan. 13, 2011) [hereinafter CALTECH] (on file with author).

238. MIT, *supra* note 230, at 3; *see also infra* notes 300-01 and accompanying text (discussing MIT's Pet Chair requirement).

239. MIT, *supra* note 230, at app. A.

240. *Id.* at 1.

241. *Id.* "[T]he written consent of all roommates and suite mates" is required. *Id.* If a student is a resident of a cat-friendly floor, he or she is "assumed to give implied consent unless they explicitly [inform] the Pet Chair otherwise." *Id.*

242. CALTECH, *supra* note 237.

243. *Id.* The cat cannot be making noise continuously "for a period of thirty minutes or intermittently for [two] hours or more." *Id.*

244. *Id.*

245. MIT, *supra* note 230, at 2; *see* CALTECH, *supra* note 237.

246. MIT, *supra* note 230, at 2.

at another school was that the owner of the cat must agree that his or her room can be entered into and the cat removed in the event there is reasonable cause to believe that an emergency exists, including suspected abuse of the cat.<sup>247</sup> MIT requires cats to wear collars with identification information that would enable the cat to be reunited with his or her owner in the event of an emergency.<sup>248</sup>

#### D. "Pet-Friendliest" Colleges

A few colleges have distinguished themselves as the most generous in allowing students to live with pets on campus. Eckerd College in St. Petersburg, Florida; Stephens College in Columbia, Missouri; Stetson University in Deland, Florida; and Washington & Jefferson College in Washington, Pennsylvania, allow dogs, cats, and other small pets in on-campus housing.<sup>249</sup>

There is no apparent trend toward more pet-friendly campuses, even given the recent addition of Stetson University to the short list of schools that allow cats or dogs in on-campus housing. Stetson University's policy came into existence with the support of its President, who introduced a similar program when she was President of Stephens College.<sup>250</sup>

In all the programs, the type of pet allowed is designated with restrictions. Eckerd College distinguishes between pets and domestic animals, with domestic animals permitted in all the complexes.<sup>251</sup> Pets include cats, dogs, rabbits, ducks, and ferrets; fish, small birds, hamsters, gerbils, guinea pigs, amphibians, and reptiles are included in the domestic animal category.<sup>252</sup> Small animals are allowed at the other colleges as well, although the list of allowed small animals is more restricted.<sup>253</sup>

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247. CALTECH, *supra* note 237.

248. *See* MIT, *supra* note 230, at 2.

249. ECKERD C., *supra* note 170 (claiming that Eckerd College has "one of the oldest pets-in-residence programs in the country"); *Pet Central*, STEPHENS C., <https://www.stephens.edu/admission/living/petcentral.php?promo=petcentral> (Jan. 29, 2012) [hereinafter STEPHENS C.] (stating that it has allowed pets since Fall 2004); STETSON U., *supra* note 209; WASHINGTON & JEFFERSON C., *supra* note 170, at 1.

250. STETSON U., *supra* note 209 (discussing Stetson's President Wendy B. Libby).

251. ECKERD C., *supra* note 170, at Glossary of Terms, Pets Permitted on Campus.

252. *Id.*

253. *See* STEPHENS C., *supra* note 249 (providing that no snakes are allowed); STETSON U., *supra* note 209 (indicating that other animals would be allowed but not listing them); WASHINGTON & JEFFERSON C., *supra* note 170, at 1 (providing that other animals beyond cats, dogs, small birds, hamsters, gerbils, guinea pigs, turtles, and fish may be approved on a case-by-case basis).

Weight restrictions for dogs are common, although Stephens College does not impose such a limit.<sup>254</sup> All of the colleges have breed restrictions for dogs.<sup>255</sup> None of the schools allow Pit bulls or Rottweilers, and some colleges also ban German Shepherds, Chows, Akitas, and mixes of those breeds.<sup>256</sup>

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254. ECKERD C., *supra* note 170, at What is a Pet? (providing that dogs must be under forty pounds); STEPHENS C., *supra* note 249 (stating there is no weight limit), STETSON U., *supra* note 209 (stating that dogs must be under thirty pounds); WASHINGTON & JEFFERSON C., *supra* note 170, at 1 (providing that dogs may not exceed forty pounds). Note that the DOJ determined that a size or weight restriction for service animals was inappropriate and because “large dogs have always served as service animals, continuing their use should not constitute fundamental alterations or impose undue burdens on [public accommodations]”). Title II Final Rule, 75 Fed. Reg. 56,164, 56,194 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35); Title III Final Rule, 75 Fed. Reg. 56,236, 56,268 (Sept. 15, 2010) (codified as 28 C.F.R. § 36.104); *see also* U.S. DEP’T OF HOUS. & URBAN DEV., OFFICE OF FAIR HOUS. & EQUAL OPPORTUNITY, VOLUNTARY COMPLIANCE AGREEMENT BETWEEN U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE HOUSING AUTHORITY OF THE CITY OF LAFAYETTE 18, [http://portal.hud.gov:80/portal/documents/hud/doc?id=DOC\\_7551.pdf](http://portal.hud.gov:80/portal/documents/hud/doc?id=DOC_7551.pdf) (last visited Jan. 29, 2012) [hereinafter LHA-VCA] (providing that weight and size limitations would be required to be removed from the pet policy for service/assistance animals).

255. *See, e.g.*, ECKERD C., *supra* note 170, at Pets Permitted on Campus; STEPHENS C., *supra* note 249; STETSON U., *supra* note 209; WASHINGTON & JEFFERSON C., *supra* note 170, at 1.

256. ECKERD C., *supra* note 170, at Pets Permitted on Campus (providing that Pit Bulls, Rottweilers, wolf breeds, and mixes containing those breeds are not allowed); STEPHENS C., *supra* note 249 (stating that for insurance reasons, Pit Bulls, Rottweiler, German Sheperds, Chows, and Akitas are not allowed); STETSON U., *supra* note 209 (stating that no Pit Bulls, Rottweilers, Chows, Akitas, and wolf breeds are allowed); WASHINGTON & JEFFERSON C., *supra* note 170, at 1 (providing that no Pit Bulls, Rottweilers, wolf breeds, or mixes of those breeds are allowed). Note that the DOJ guidance for the ADA regulations defining service animals specifically rejected allowing local laws with breed restrictions to apply to exclude certain breeds, and a housing provider is required, in considering whether a dog may be excluded from that housing, to take into account that dog’s actual history, not generalizations about how the dog may behave due to the dog’s particular breed. Title II Final Rule, 75 Fed. Reg. 56,164 at 56,194; Title III Final Rule 75 Fed. Reg. at 56,268. A recent case in Iowa dealing with the application of a local breed discriminatory ordinance also supports the individual evaluation of a dog for purposes of the determining whether an individual should have access pursuant to the ADA. *Sak v. City of Aurelia*, No. C 11-4111-MWB, 2011 WL 6826146 (N.D. Iowa Dec. 28, 2011). In this case, a district court judge issued a preliminary injunction enjoining a city from applying a breed specific ordinance on a service dog that was identified as a pit bull mix. *Id.* at \*13, \*19-20; *see also, e.g.*, LHA-VCA, *supra* note 254, at 18 (providing that breed restrictions would be required to be removed from the pet policy for service/assistance animals allowed pursuant to the FHA).

Some of the colleges specify that the animal must be a “family pet” and require the animal to have been in the family for a specified period of time.<sup>257</sup> The policies generally do not allow a student to acquire an animal (whether purchased or stray) while the student is living at the college.<sup>258</sup> Stephens College, however, has a program that allows students to foster animals through a local rescue organization, with the rescue organization keeping the fostered animals during breaks.<sup>259</sup> Eckerd College’s pet policy also provides that during an evacuation from campus, all pets and domestic animals must be removed from campus as the power is shut down and “abandoned animals may suffer from hunger and be subjected to discomfort.”<sup>260</sup>

Not every student is allowed to have a pet in campus housing. All of the colleges restrict dogs and cats to a limited number of dormitories.<sup>261</sup> Eckerd College requires all students to live on campus for at least one semester before bringing a pet to campus.<sup>262</sup>

Registration is required, and applicable pet fees or deposits must be paid prior to or shortly after bringing the pet to campus.<sup>263</sup> Students are responsi-

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257. ECKERD C., *supra* note 170, at Glossary of Terms (providing that the pet must “have lived with the student’s family for at least ten months” and be at least one year old); WASHINGTON & JEFFERSON C., *supra* note 170, at 1 (providing the animal must have been in the family for at least one year and be at least one and a half years old).

258. ECKERD C., *supra* note 170, at Glossary of Terms; WASHINGTON & JEFFERSON C., *supra* note 170, at 1.

259. STEPHENS C., *supra* note 249 (providing the opportunity to foster through Columbia Second Chance and stating that the rescue organization would provide interim care, food, and medical care for the animals); *cf.* Caroline Alphonso, *Student Residence Going to the Dogs (and Cats)*, GLOBE & MAIL, Oct. 19, 2008, at A3 (reporting on program at Mount Allison University in Canada that converted a building on campus to a residence to house the students and foster animals); *Mount A Animal House Welcomes First Foster Pets of the Year*, SACKVILLE TRIB., Oct. 7, 2010, <http://www.sackvilletribunepost.com/Living/2010-10-07/article-1830187/Mount-A-Animal-House-welcomes-first-foster-pets-of-the-year/1> (reporting on the animals that the students of the university were providing care for at the beginning of the 2010-11 academic year). The pet policies generally do not allow cats and dogs on campus during the summer or during breaks. ECKERD C., *supra* note 170, at Pets Permitted on Campus; WASHINGTON & JEFFERSON C., *supra* note 170, at 1.

260. ECKERD C., *supra* note 170, at Hurricane Evacuations and Campus Breaks.

261. *Id.* at Pets Permitted on Campus (listing five residential houses where pets are allowed); STEPHENS C., *supra* note 249 (designating one dormitory as “Pet Central”); STETSON U., *supra* note 209 (announcing the University’s first pet-friendly residence hall); WASHINGTON & JEFFERSON C., *supra* note 170, at 1 (stating that pets are permitted in only one designated dormitory).

262. ECKERD C., *supra* note 170, at Pets Permitted on Campus.

263. *Id.* at Registration and Inoculation and Pet Owner Probation (providing a registration fee of \$125, which includes a veterinary visit and mandated flea treatment, and that pets must be registered within five days of arrival on campus); STEPHENS C., *supra* note 249 (providing for a \$200 deposit that is refundable if there

ble for any damage done by their pets, and one college recommends, but does not require, students obtain liability insurance.<sup>264</sup> Dogs and cats must have appropriate vaccinations and be spayed or neutered.<sup>265</sup> As with the cat-friendly colleges, photographs of the pets are required to help ensure that the animal registered is the animal in the housing.<sup>266</sup>

Similar to the rules at the colleges that allow cats, there are expectations as to the control students must have over their pets. Pets are not allowed to be unsupervised outside of the student's room.<sup>267</sup> Stephens College has a "Doggie Daycare" that has dog runs and a place for dogs to play.<sup>268</sup>

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are no damages to the room); WASHINGTON & JEFFERSON C., *supra* note 170, at 2 (providing a fee of \$50 for cats and dogs and \$25 for other pets). Note that if an animal is a service animal under the ADA or an assistance animal under the FHA, a housing provider cannot require the individual with a disability to pay a fee for allowing the animal to have access to the property. 28 C.F.R. §§ 35.136(h), 36.302(c)(8) (2011) (providing that public entities and accommodations may not require an individual to pay a surcharge, but, if it normally charges individuals for damages caused, it may charge an individual the cost of damages caused by his or her service animal); HUD HANDBOOK, *supra* note 78, § 2-44(E), at 2-42 (providing that a housing provider may not require a tenant to pay a fee as a condition of allowing the tenant to keep an assistance animal but allowing the housing provider to charge the tenant for the cost of repairing any damage if the housing provider regularly charges tenants for damage they cause).

264. WASHINGTON & JEFFERSON C., *supra* note 170, at 2. If an animal is a service animal or assistance animal, the housing provider cannot require the individual to have liability insurance. HUD/DOJ Reasonable Accommodations Under the Act, *supra* note 58, at ¶ 11 (providing that housing providers cannot require persons "to pay extra fees or deposits as a condition of receiving a reasonable accommodation" and using as an example the requirement that an individual utilizing a motorized scooter cannot be required to obtain liability insurance); *see also, e.g.*, Charge of Discrimination at 2, HUD v. ST Owner LP, FHEO Case No. 02-08-0008-8 (H.U.D.A.L.J. Apr. 30, 2008) (providing in the factual allegations in support of charge of discrimination under the FHA the policy of requiring tenants entitled to keep support animals maintain a liability insurance policy); LHA-VCA, *supra* note 254, at 18 (removing the provision that required renters to provide liability insurance for assistance/service animals); *cf.* 24 C.F.R. § 5.318(d)(5)(i) (2011) (providing in the discretionary pet rules for the Pets Ownership for the Elderly and Persons with Disabilities law that a housing provider may not require pet owners to "obtain liability or other insurance to cover damage caused by the pet").

265. ECKERD C., *supra* note 170, at Registration and Inoculation; WASHINGTON & JEFFERSON C., *supra* note 170, at 2.

266. ECKERD C., *supra* note 170, at Registration and Inoculation; WASHINGTON & JEFFERSON C., *supra* note 170, at 2.

267. ECKERD C., *supra* note 170, at Rules of Conduct; WASHINGTON & JEFFERSON C., *supra* note 170, at 3.

268. STEPHENS C., *supra* note 249; *see* Heavin, *supra* note 213 (discussing the doggie day care and interest by community members in participating in it).



Animals that become a nuisance can subject the student to disciplinary action, including requiring the animal to be removed from campus.<sup>269</sup> Pets that are a threat to other animals or humans are not tolerated.<sup>270</sup> The colleges provide for a process to resolve any issues.<sup>271</sup> Eckerd College has a pet council that meets “as necessary to consider complaints.”<sup>272</sup> The pet council is made up of students, both pet and non-pet owners, who are responsible for administering the pet policy.<sup>273</sup> These meetings are open to all members of the college community who wish to address the council, and “[a]ny member of the Eckerd College community may file a confidential complaint.”<sup>274</sup> The pet council has broad discretion to take actions, including “warnings, fines, [and] removal of the pet from campus.”<sup>275</sup> Eckerd College also has a probation mechanism to deal with special circumstances or violations of the pet policy.<sup>276</sup>

At Washington & Jefferson College, if the college determines that a pet is to be removed from campus, the student’s parents will be notified, and the student will incur fines if he or she fails to remove the pet within the designated time.<sup>277</sup>

The welfare of the animals is part of pet policies as well. Washington & Jefferson’s pet policy states that “[a]bandonment, neglect, or mistreatment of any pet by any member of W&J College will not be tolerated.”<sup>278</sup> At Washington & Jefferson College, staff members conduct regular checks of rooms to confirm that animals are “not being neglected, harmed or living in filth.”<sup>279</sup> Dogs and cats are required to wear identification tags, and Washington & Jefferson College encourages students to have their pet microchipped.<sup>280</sup> Although Washington & Jefferson College’s campus is non-smoking, except

269. ECKERD C., *supra* note 170, at Rules of Conduct; STEPHENS C., *supra* note 249; WASHINGTON & JEFFERSON C., *supra* note 170, at 3.

270. ECKERD C., *supra* note 170, at Rules of Conduct; WASHINGTON & JEFFERSON C., *supra* note 170, at 3.

271. *E.g.*, WASHINGTON & JEFFERSON C., *supra* note 170, at 4.

272. ECKERD C., *supra* note 170, at Complaints.

273. *Id.* at Eckerd College Pet Council (ECPC).

274. *Id.* at Complaints and Complaint Procedure.

275. *Id.* at Complaints.

276. *Id.* at Pet Owner Probation.

277. WASHINGTON & JEFFERSON C., *supra* note 170, at 4 (providing that a \$200 fine will be assessed if an animal is not removed within a week, with \$100 fines assessed for each day after that if the animal is not removed).

278. *Id.* at 3.

279. *Id.*

280. *Id.* at 2; *see also* Rebecca J. Huss, *Separation, Custody, and Estate Planning Issues Relating to Companion Animals*, 74 U. COLO. L. REV. 181, 219-20 (2003) (discussing issues relating to lost and found animals, including microchipping).

in designated outside areas, its pet policy references the dangers of smoking around animals.<sup>281</sup>

Eckerd College's pet policy also provides that "mistreatment of any pet by any member of Eckerd College will not be tolerated."<sup>282</sup> In addition, "[n]o warnings will be issued. In the case of abuse, the pet will be removed from the situation in order to prevent contact with the person(s) responsible for the abuse."<sup>283</sup>

Measuring whether pet-friendly policies are working is challenging. One housing coordinator at a college allowing cats and small animals has stated there had been few problems with the policy over the previous decade.<sup>284</sup> In contrast, another college that once permitted pet fish banned them due to concerns about health and safety, and other colleges have put more restrictive policies in place.<sup>285</sup> Because many of the more generous programs have not been in place for a significant length of time, several years may pass before colleges are able to determine whether the programs are justified.<sup>286</sup>

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281. WASHINGTON & JEFFERSON C., *supra* note 170, at 3 (providing in the pet policy that smoking "poses a risk to both pets and pet owners"); *Smoking Policy*, WASHINGTON & JEFFERSON C. (Sept. 9, 2011), <http://wiki.washjeff.edu/display/StudentHB/Smoking+Policy>.

282. ECKERD C., *supra* note 170, at Owner Responsibility.

283. *Id.*

284. Hoover, *supra* note 182 (interviewing the housing coordinator from SUNY Canton).

285. *Id.* (discussing Cabrini College's decision to ban fish and a report that there had been instances where students had eaten a roommate's fish); see *What Not to Bring*, CABRINI C., <http://www.cabrini.edu/Student-Life/Living-on-Campus/Move-In-Information/What-Not-to-Bring.aspx> (last visited Jan. 31, 2012) (stating that students should not bring in "[p]ets of any kind" to campus); see also Mary Niederberger, *Pet-Friendly Dorm Makes Life Pleasant at W&J*, PITTSBURG POST-GAZETTE, Nov. 11, 2010, at S-1 (reporting that the President of Washington & Jefferson, Tori Haring Smith, had a cat at Swarthmore College before that college ended the practice). Currently, Swarthmore College does not allow any pets in dormitories; however, employees may have pets in their private offices. *Pets in the Workplace*, SWARTHMORE C., <http://www.swarthmore.edu/x14631.xml> (last visited Jan. 31, 2012); *What Should I Bring?*, SWARTHMORE C., <http://www.swarthmore.edu/x10681.xml> (last visited Jan. 31, 2012). An obvious example is the recent change in policy at CalTech. Caltech Housing Pet Policy, CALTECH DEPARTMENT INST. HOUSING, [www.housing.caltech.edu/cat\\_policy.asp](http://www.housing.caltech.edu/cat_policy.asp) (last visited Feb. 11, 2012) (discussing how CalTech no longer allows cats).

286. Nate Carlisle, *Dorm a Haven to Some Pets*, COLUMBIA DAILY TRIB. (Columbia, Mo.), Aug. 24, 2004, [http://archive.columbiatribune.com/2004/aug/20040824new\\_s005.asp](http://archive.columbiatribune.com/2004/aug/20040824new_s005.asp) (reporting on the adoption of the new policy at Stephens College in 2004); Deborah Circelli, *Hatters Return, Pets in Tow: Dogs, Cats, Other Critters Make Up New Student Body*, DAYTONA NEWS-J., Aug. 12, 2010, at 1C (reporting that Eckerd College began to gradually allow pets in dormitories in the 1980s and 1990s, with the current count at approximately three hundred students with small animals and thirty to fifty students with cats or dogs); Ellen Mitchell, *Washington & Jefferson Designates*

### E. Equine Friendly Institutions

In a separate category are the institutions that have programs that allow students to bring their equines to campus. Some people consider their equines companion animals. Two percent of U.S. households report that they have an equine.<sup>287</sup>

It is not uncommon for a college to have an equestrian team or an equestrian studies program.<sup>288</sup> It is less common to have an equestrian program where the equines are housed on college property. Earlham College in Richmond, Indiana, has its equestrian center on campus and provides limited boarding of students' equines in addition to housing the college's horses.<sup>289</sup> The Earlham program has policies to deal with a variety of issues, including dangerous horses.<sup>290</sup> Measures to ensure that the equines, whether school-

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*Dorm for Students with Pets*, PITTSBURGH TRIB. REV., June 20, 2010, [http://www.pittsburghlive.com/x/pittsburghtrib/news/regional/s\\_686866.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/regional/s_686866.html) (reporting that Vassar College first allowed pets in 1971 and that SUNY Canton allowed pets in 1996).

287. APPA, *supra* note 1, at 4. This percentage includes equines kept at respondent's property as well as equines boarded outside the home. *Id.* The AVMA reports only 1.8% of U.S. households had horses as pets. AVMA, *supra* note 1, at 2. One of the reasons for the smaller percentage the AVMA reported is that it appears that the AVMA survey may have been clearer in its inclusion only of horses that were considered to be pets, rather than horses cared for on ranches, farms, and other horse operations. *See id.* at 39. The average number of equines per household is 3.3. APPA, *supra* note 1, at 9. The AVMA reports a similar number with the average number of horses per horse household at 3.5. AVMA, *supra* note 3, at 2.

288. *See* THE COLLEGE EQUESTRIAN, [http://www.thecollegeequestrian.com/pages/tce\\_college\\_search.htm](http://www.thecollegeequestrian.com/pages/tce_college_search.htm) (last visited Jan. 31, 2012) (providing a search engine for finding a college with an equestrian team); *see also Equestrian and Equine Studies/Horse Management Colleges and Universities*, U.S. C. SEARCH, <http://www.uscollegesearch.org/equestrian-and-equine-studies/-/horse-management-colleges.html> (last visited Jan. 31, 2012) (listing equestrian and equine studies programs).

289. *See Equestrian Program, Facilities and Services*, EARLHAM C., <http://www.earlham.edu/equestrianprogram/content/facilitiesandservices.html> (last visited Jan. 31, 2012). Earlham's program is somewhat unique in that it is student-run. *Equestrian Program, The Cooperative*, EARLHAM C., <http://www.earlham.edu/equestrianprogram/content/coop.html> (last visited Jan. 31, 2012).

290. *Equestrian Program, Policies, Dangerous Horse Behavior Policy*, EARLHAM C., <http://www.earlham.edu/equestrianprogram/documents/pdf/policies/dangerous-behavior.pdf> (last visited Jan. 31, 2012). Other colleges have cooperative programs as well. *See, e.g., The UVM Horse Barn Co-op*, U. VERMONT, [http://asci.uvm.edu/horse\\_barn/?Page=barnmember.html](http://asci.uvm.edu/horse_barn/?Page=barnmember.html) (last visited Jan. 31, 2012) (setting forth the time commitment in connection with boarding a student's horse in the co-op).

owned or boarders, have appropriate veterinary and other care also are included in the policies.<sup>291</sup>

Not surprisingly, one of the “pet-friendliest” colleges also has an equestrian studies program. Stephens College offers multiple degrees in equestrian studies.<sup>292</sup> It has several facilities for the equines that it states are “just a short walk” from the college’s residential halls.<sup>293</sup> In addition to having access to school-owned equines, students may board their own horses at the campus barns.<sup>294</sup>

Although the programs discussed above are located at smaller colleges in the Midwest, equestrian facilities can be found across the country and at large universities. For example, Stanford University does not have an equestrian studies program but does have an equestrian team and has facilities where students can board their horses for a reduced rate.<sup>295</sup> The University of Vermont has an equine science program, an equestrian team, and a barn co-op for boarding student’s horses.<sup>296</sup>

## V. CONCERNS ABOUT COMPANION ANIMALS ON CAMPUS

Allowing companion animals on campus can be an administrative burden for institutions. Just keeping unapproved pets out of on-campus housing appears to be a constant job, if anecdotal reports are accurate.<sup>297</sup> One way to limit the time spent on the issue is to require that students themselves take as much of the responsibility as possible. Requiring students to register their animals in advance and provide all records relating to the animal prior to the animal coming on campus is one step to discourage students from making last

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291. *Blanketing and Turnout Policy*, EARLHAM C., <http://www.earlham.edu/equestrianprogram/documents/pdf/policies/blanketing-turnout.pdf> (last visited Jan. 31, 2012); *Health Policy*, EARLHAM C., <http://www.earlham.edu/equestrianprogram/documents/pdf/policies/health.pdf> (last visited Jan. 31, 2012).

292. *Equestrian, Degrees*, STEPHENS C., <http://www.stephens.edu/academics/programs/equestrian/degrees/index.php> (last visited Jan. 31, 2012).

293. *Equestrian, Facilities*, STEPHENS C., <http://www.stephens.edu/academics/programs/equestrian/facilities/index.php> (last visited Jan. 31, 2012); *Equestrian, Welcome*, STEPHENS C., <http://www.stephens.edu/academics/programs/equestrian/> (last visited Jan. 31, 2012).

294. *Equestrian, Frequently Asked Questions*, STEPHENS C., <http://www.stephens.edu/academics/programs/equestrian/FAQ/index.php> (last visited Jan. 31, 2012) (discussing the boarding contract for student horses).

295. *Stanford Red Barn, Services & Rates*, STANFORD U., <http://set.stanford.edu/barn/rulesrates.htm> (last visited Jan. 31, 2012).

296. *Equine Science Program, Facilities*, U. VERMONT, <http://asci.uvm.edu/equine/?Page=facilities.html> (last visited Jan. 31, 2012).

297. Hoover, *supra* note 182 (discussing the problem of a “small-but-determined percentage of students” who house pets on campus in violation of college policies banning them).

minute decisions to keep an animal.<sup>298</sup> The use of “pet councils” made up of students and faculty members that enforce written guidelines puts some of the burden on students rather than just administrators.<sup>299</sup>

Requiring students to take the lead in ensuring that the pet policy is being followed also can be done. MIT requires each cat-friendly dormitory to choose a “Pet Chair” before any cats are allowed in the dormitory.<sup>300</sup> The Pet Chair must assist cat owners with forms and ensure follow-up on vaccinations and sterilizations.<sup>301</sup> By having an individual at the dormitory, administrators have at least one person “on the ground” who would be monitoring the animals and their owners.

### A. Concerns for Students and Others on Campus

#### 1. Public Safety

One public safety concern is the possibility of the animal harming a human or another animal. Dog bite laws vary by state, and a complete discussion of them is beyond the scope of this Article; however, it is a real and serious concern.<sup>302</sup> The Centers for Disease Control and Prevention (CDC) reports that dogs in the United States bite more than 4.7 million people a year.<sup>303</sup> The CDC also reports that each year approximately 800,000 people in the United States seek medical attention for dog bites.<sup>304</sup>

According to the Insurance Information Institute, more than fifty percent of bites occur on an owner’s property and account for one-third of all home-

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298. See MIT, *supra* note 230.

299. See Steinberg, *supra* note 207 (discussing the establishment of a pet council at Stephens College “following the lead of Eckerd and Washington & Jefferson colleges”); *supra* notes 271-75 and accompanying text (discussing the use of a pet council).

300. MIT, *supra* note 230, at 1.

301. *Id.*

302. For more information on dog bite laws, see generally, for example, Huss, *No Pets Allowed*, *supra* note 76, at 124-27 (discussing the “bite issue”); Philip T. Kolbe et. al., *Bodily Injury Liability and Residential Property Values: Canine Risks*, 34 REAL EST. L.J. 43 (2005) (discussing liability claims relating to injuries from dog bites); Hilary M. Schwartzberg, Note, *Tort Law in Action and Dog Bite Liability: How the American Legal System Blocks Plaintiffs from Compensation*, 40 CONN. L. REV. 845 (2008) (analyzing the problems of legislation relating to dog bites).

303. *Dog Bite: Fact Sheet*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/HomeandRecreationalSafety/Dog-Bites/dogbite-factsheet.html> (last visited Jan. 31, 2012) [hereinafter CDC].

304. *Id.* The CDC also reports that “[t]he rate of dog bite injuries is highest for children [five to nine] years [of age] and . . . decreases as children age.” *Id.* The injury rate for boys is significantly higher than for girls. *Id.*

owner liability claims.<sup>305</sup> Insurance policies typically cover dog bite liability, with the owner personally responsible for any claim exceeding the policy limit.<sup>306</sup>

An obvious issue for landlords, whether a postsecondary institution or a private individual, is the possibility that they will be sued if a tenant's animal injures someone. Just as with liability for dog bites generally, the law in this area varies by state.<sup>307</sup> Liability for landlords is often predicated on their ability to control the situation.<sup>308</sup> Obviously, landlords have less control over what happens within the unit than over common areas.<sup>309</sup> Some states' case law establishes that landlords are not liable for the actions of dogs belonging to their tenants, even in cases where the landlord knew the danger of a foreseeable harm.<sup>310</sup> It may be necessary to show that the landlord had control of

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305. *Dog Bite Liability*, INS. INFO. INST., <http://www.iii.org/articles/dog-bite-liability.html> (last visited Jan. 31, 2012).

306. *Id.*

307. Generally, common law provides the structure for liability in this area of the law. *But see* L.D. 74 (H.P. 62), 125th Leg. (Me. 2011) (providing that a tenant and landlord are jointly and severally liable for damages caused by the tenant's pet to a third party). E-mail from Steve Wood, Representative, Me. House of Representatives to author (Jan. 20, 2011, 04:38 PM CST) (on file with author) (explaining that the bill was submitted by request for a constituent). As of April 7, 2011 this bill was "Placed in Legislative Files (dead)" in the Senate, Maine Legislature. *Summary of LD 74*, ST. ME. LEGIS., <http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280039008> (last visited Jan. 31, 2012).

308. 4 J.D. LEE & BARRY LINDAHL, *MODERN TORT LAW: LIABILITY AND LITIGATION* § 39:44 (2d ed. 2011) (discussing the liability of landlords to third parties); Ramona C. Rains, Comment, *Clemmons v. Fidler: Is Man's Best Friend a Landlord's Worst Enemy?*, 19 AM. J. TRIAL ADVOC. 197, 200-01 (1995) (discussing the rationales that courts utilize when considering whether landlords should be held liable for the actions of a tenant's animal); *see also, e.g.*, *McLeod v. Hodgeman*, No. A06-2168, 2007 WL 4110068, at \*3 (Minn. Ct. App. Nov. 20, 2007) (reiterating Minnesota law that provides that "landlords are generally not liable for injuries inflicted by dogs in areas controlled by tenants").

309. *See, e.g.*, *Patterson v. Rank*, No. 10-0566, 2010 WL 5394623, at \*3-4 (Iowa Ct. App. Dec. 10, 2010) (analyzing the role of common areas in a case granting a summary judgment motion in favor of landlords).

310. *Savage v. Amato*, No. CV095028006S, 2010 WL 3172136, at \*4 (Conn. Super. Ct. July 15, 2010) (citing to dispositive authority in Connecticut that held that landlords will not be liable for an injury caused by a tenant's animal if the landlord is not an owner or keeper of the animal and analyzing the possibility of a claim based on alternative theories); *see, e.g.*, *Fair v. United States*, 513 S.E.2d 616, 617 (S.C. 1999) (holding that "a landlord is not liable to a tenant's invitee for [harm] caused by [the] tenant's dog"); *Mitchell ex rel. Mitchell v. Bazzle*, 404 S.E.2d 910, 911-12 (S.C. Ct. App. 1991) (finding that even though the landlord knew of the dog's viciousness, had adequate time to terminate the tenant's lease, and failed to terminate the tenant's lease, the landlord was not liable for the acts of the tenant's dog over which the landlord had no control); *see also, e.g.*, *Huss, No Pets Allowed*, *supra* note 76, at 126

the premises as well as knowledge of the dangerous or vicious propensities of the dog in order to find liability.<sup>311</sup> Normally, landlords are not liable for injuries caused by a tenant's animal that occur off a landlord's premises.<sup>312</sup> Regardless of the fact that landlords may prevail in cases where they do not have knowledge or control over an animal, the fact that they can be sued encourages the imposition of a no-pets policy.

University policies and agreements should state that the owner of the companion animal is financially responsible for damages, whether bodily injury or property damages.<sup>313</sup> This agreement likely is not to be of great comfort to university administrators, as there is the risk that the student owner would not have the resources to compensate a third party for any injury. Students requesting the privilege of keeping a companion animal on campus could be required to show proof of a current liability insurance policy that covers injuries the pet causes.<sup>314</sup>

The best way to deal with the issue of bites is to prevent the problem from occurring. Although the percentage of young adults that are bitten by dogs is less than children, educating the campus community about dog bite prevention is a reasonable first step.<sup>315</sup> Given that intact animals (especially

n.468 (discussing Iowa cases that establish "that a landlord who does not have [a] right to control a tenant's dog would not be liable to an invitee of [the] tenant," subject to limited exceptions).

311. *E.g.*, *Morehead v. Deitrich*, 932 N.E.2d 1272, 1275-76 (Ind. Ct. App. 2010) (reiterating that "[i]n order to prevail against a landowner for the acts of a tenant's dog, the plaintiff must demonstrate both that the landowner[] retained control over the property" and "had actual knowledge that the [dog] had dangerous propensities" (second and third alterations in original) (quoting *Jones v. Kingsbury*, 779 N.E.2d 951, 953 (Ind. Ct. App. 2002)) (internal quotation marks omitted)), *transfer denied*, 950 N.E.2d 1202 (Ind. 2011). In a case involving a stray cat clawing a minor tenant, the Supreme Court of North Dakota stated "a duty to protect others from harm by an animal on the premises arises only when the landlord knows that the animal is dangerous and presents an unreasonable risk of harm." *Amyotte ex rel. Amyotte v. Rolette Cnty. Hous. Auth.*, 658 N.W.2d 324, 326, 328 (N.D. 2003). *But see Huss, No Pets Allowed, supra* note 76, at 127 n.469 (analyzing cases finding liability for landlords in specific situations and the criticism of those cases).

312. *E.g.*, *Sedeno v. Luciano*, 824 N.Y.S.2d 294, 294 (2006) (reiterating rule that "the landlord of the premises where the dogs was kept, had no responsibility to prevent a dog-bite incident that allegedly occurred off defendant's property").

313. *Lehigh Pet Policy, supra* note 223 (stating that "[t]he owner is financially responsible for the actions of their pet including, but not limited to: bodily injury, house damages, and campus property damages").

314. Note this could only be applicable to companion animals, not service or assistance animals. *See supra* note 264 (discussing restrictions on requiring liability insurance for service animals and assistance animals).

315. Am. Veterinary Med. Ass'n Task Force on Canine Aggression and Human-Canine Interactions, *A Community Approach to Dog Bite Prevention*, 218 J. AM. VETERINARY MED. ASS'N 1732, 1739 (2001), available at [http://www.avma.org/public\\_health/dogbite/dogbite.pdf](http://www.avma.org/public_health/dogbite/dogbite.pdf) (setting forth an approach to prevent dog bites

males) are more likely to be involved in reported bite incidents, another step is to require that all companion animals kept in university housing be sterilized.<sup>316</sup> Obviously, animals that have a history of aggression should not be allowed in campus housing, and if an animal begins behaving in a threatening manner, university policy should provide for the animal's removal from campus.<sup>317</sup> Whether such removal is immediate or after a review process should be dependent on the level of the threat. An unprovoked dog who bites a human should be subject to immediate removal; however, a dog that barks at strangers may or may not be aggressive, and a review process is more appropriate.

## 2. Allergies and Phobias

One stated concern for allowing pets in campus housing is the possible negative impact on other students. For example, some students at Stephens College resisted allowing pets on campus.<sup>318</sup> Students raised concerns over the possibility of loud animals and the impact on the grass around the college.<sup>319</sup> The Lehigh University policy that allows one dog or cat in each fraternity or sorority states that “[s]ensitivity to students and others with allergies and to those who fear dogs, cats, or other animals is imperative.”<sup>320</sup> MIT limits its pet policy to allowing only cats in specified dorms, in part to “limit the number of people with allergies that will be affected by the presence of the pets.”<sup>321</sup> MIT's policy also provides that if a “resident of a cat-friendly

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in communities and stating that “[e]ducation is key to reducing dog bites within a community”).

316. *See id.* at 1733; *see also* KAREN DELISE, *THE PIT BULL PLACEBO: THE MEDIA, MYTHS AND POLITICS OF CANINE AGGRESSION* 164–65 (2007) (discussing the role of the reproductive status of dogs involved in fatal attacks and emphasizing the multiple factors that are often present when a serious attack occurs). Service animals may be excluded from sterilization policies, and an exception could be provided in the policy if sterilization would be medically inadvisable; however, for such an exception to be made, appropriate documentation should be provided. *See, e.g.*, LAS VEGAS, NEV., CODE §§ 7.14.010, .020 (2009) (exempting service animals from mandatory spay/neuter ordinance); L.A. COUNTY, CAL. CODE §§ 10.20.090, .355 (providing mandatory spaying or neutering of dogs but providing as an exemption service or assistance animals).

317. *See, e.g., Lehigh Pet Policy, supra* note 223 (stating “[i]f a cat or dog attacks, bites, or threatens anyone on University property, the animal is subject to immediate removal”).

318. Carlisle, *supra* note 286 (reporting on the adoption of the new policy at Stephens College).

319. *Id.*

320. *Lehigh Pet Policy, supra* note 223.

321. MIT, *supra* note 230, at app. A.



area requests removal of a cat due to health reasons . . . the cat must be removed from that particular area of the house.”<sup>322</sup>

### B. Concerns for the Companion Animals

In addition to being concerned about the impact of companion animals on the humans on campus, some administrators and animal advocates are concerned over the ability of college students to adequately care for companion animals.<sup>323</sup> Harvey Mudd College (which allows small animals) states in its pet policy that its policy “exists both to protect the welfare of the animals involved (a dorm room is too small for a cat, dog or other larger pet to be healthy and properly taken care of) and to protect the welfare of students living in the same dorm or room.”<sup>324</sup> In contrast, MIT’s Pet Policy does not allow pets other than cats because “it will be very easy to tell if a cat is being cared for properly, whereas it is more difficult to see if a hamster or iguana is.”<sup>325</sup>

One study investigated the behavior of owners of companion animals that were college students in a large metropolitan area in the Midwest.<sup>326</sup> Although there was a significant number of what are termed “non-traditional” participants (older, married, employed full-time), the study is relevant because these students would have some of the same circumstances that a group consisting of younger and/or single college students would encounter, such as financial limitations and time management issues.<sup>327</sup>

The researchers divided the questions into four categories of pet care, ranging from essential care, consisting of the owner providing for the basic physical needs of the pet, to luxury care, defined as providing indulgences that may be expensive or extravagant.<sup>328</sup> The study also divided the respons-

322. *Id.* at 1; see also Huss, *Classroom*, *supra* note 12, at 7-9 (discussing concerns over the impact of service animals on the allergies of other students in school environments).

323. See Hoover, *supra* note 182 (reporting on concerns by animal advocacy groups).

324. *Pet Registration*, HARVEY MUDD, *supra* note 219.

325. MIT, *supra* note 230, at app. A.

326. Elsie R. Shore et al., *What’s in it for the Companion Animal? Pet Attachment and College Students’ Behaviors Toward Pets*, 8 J. APPLIED ANIMAL WELFARE SCI. 1, 1 (2005).

327. See *id.* at 3. The average age of the participants was 25.6 years, with an age range of sixteen to sixty years. *Id.* at 4. Twenty-four percent of the participants were thirty years old or older. *Id.* The authors of the study cautioned against generalizing the results of the study to other populations and emphasized that because the data was self-reported it was not possible to know if the participants actually provided such care. *Id.* at 9.

328. *Id.* at 5.

es based on self-reported attachment levels to the animals.<sup>329</sup> The study found that regardless of the reported level of attachment, most, and in some circumstances nearly all, respondents engaged in the behaviors that were designated as essential care.<sup>330</sup> The failure to meet some of the essential care standards (such as the pet having access to water at all times and a rabies vaccination), would be the basis of neglect charges or other action under applicable laws.<sup>331</sup>

As the level of care increased, the number of respondents reporting such care decreased.<sup>332</sup> In addition, the decreases occurred within each attachment category, with persons reporting high levels of attachment generally providing higher levels of care.<sup>333</sup> However, the researchers concluded that “it might be inadvisable to use scores on attachment scales as surrogate measures of respondents’ adequacy as pet owners or to assume that low attachment means poor care,” given that low attachment owners were as likely to provide basic levels of care.<sup>334</sup> Some results would be of special concern to animal advocates.<sup>335</sup> The study did not attempt to distinguish the level of care based on income of the respondents.<sup>336</sup>

Many animal advocacy organizations, including the Humane Society of the United States (HSUS), caution students to think carefully before bringing a pet to college.<sup>337</sup> The ongoing expenses for a pet may be more than college students can handle.<sup>338</sup> The time commitment of caring for animals, given the

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329. *Id.* at 6-7 tbls.1-3.

330. *Id.* at 6 tbl.1.

331. *E.g.*, IND. CODE ANN. § 35-46-3.05 (West, Westlaw through 2011 1st Reg. Sess.) (Neglect means “endangering an animal’s health by failing to provide or arrange to provide the animal with food or drink, if the animal is dependent upon the person for the provision of food or drink.”); CHI., ILL., MUN. CODE § 7-12-200 (1990) (requiring rabies vaccination for dogs and cats).

332. *See* Shore et al., *supra* note 326, at 7.

333. *See id.*

334. *See id.* at 9.

335. *See infra* notes 360-63 and accompanying text (discussing sterilization rates and the problem of pet overpopulation).

336. Studies have shown that pet owners report higher average household incomes than non-pet owners and generally pet ownership increases as household income increases. APPA, *supra* note 1, at 3; AVMA, *supra* note 1, at 5.

337. *See* Eric Schmidt, *Dog Days: Adopting a Pet Isn’t All Kibble ‘n’ Bits*, BOULDER DAILY CAMERA (Colo.), Jan. 25, 2005, at 8 (reporting on concerns over college students and pets); *Pets at College: An Idea that Might Not Make the Grade*, HUMANE SOC’Y UNITED STATES (July 28, 2010), [http://www.humanesociety.org/news/news/2010/07/pets\\_at\\_college\\_072810.html](http://www.humanesociety.org/news/news/2010/07/pets_at_college_072810.html) [hereinafter HSUS].

338. *See* Schmidt, *supra* note 336 (stating that basic pet care averages \$400-500 per year without emergencies); HSUS, *supra* note 337 (raising the issue of unexpected medical costs); *see also* Nona Tepper, *Students (Try to) Fit Pet Adoption into Their College Lifestyle*, IND. DAILY STUDENT (Student Newspaper of Indiana Univer-

other demands on a student's time, also is a concern these organizations raise.<sup>339</sup>

There are also issues with keeping small animals as pets. The HSUS recommends against reptiles and amphibians as pets because of the difficulty in caring for them in captivity and the fact that they frequently can carry the Salmonella germ, which can cause illness in humans.<sup>340</sup>

Incidences of animal cruelty on college campuses also raise concerns over student ownership of animals.<sup>341</sup> One concern is that students may abandon their pets (especially cats) at the end of their time on campus.<sup>342</sup> One study reported that "moving [was] the most often cited of [seventy-one] reasons for relinquishing dogs and the [third] most common reason for relinquishing cats."<sup>343</sup> One shelter estimated that twenty-five percent of the animals surrendered to the shelter in the month of May were relinquished by

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sity-Bloomington), Oct. 20, 2010, <http://www.idsnews.com/news/story.aspx?id=77843> (discussing the monetary and time commitment of having animals).

339. HSUS, *supra* note 337 (citing to "classes, studying, and social activities" of students as indications of their busy schedules).

340. *Id.*; *Salmonella Infection (salmonellosis) and Animals*, CENTERS FOR DISEASE CONTROL & PREVENTION (Aug. 30, 2010), <http://www.cdc.gov/healthypets/diseases/salmonellosis>. (discussing illnesses that can be caused by the Salmonella germ).

341. Hoover, *supra* note 182 (reporting on cases of animal cruelty on campus, often involving fraternities, and the response by the colleges and national organizations); Vanessa Miller, *No Hooch for the Pooch: Veterinarians say Drunken Dogs a Bad Idea*, BOULDER DAILY CAMERA (Colo.), Dec. 30, 2008, at 6 (discussing the danger of giving dogs alcohol and reporting on the higher number of dogs treated for intoxication at a clinic near the University of Colorado).

342. Mike Harden, *Pet Dumping: Spring Quarter Ends, Hard Times Begin for Some Animals*, COLUMBUS DISPATCH (Ohio), May 31, 1991, at 1D (reporting on the problems with abandoned animals near Ohio State University's campus); Shaw, *supra* note 182 (reporting on the increase by the hundreds of the number of animals in the local shelter, with a greater number after the end of the Spring semester); Deanna Smith, *BU Students Adopt Pets Off-Campus*, PIPE DREAM (Student Newspaper of Binghamton University, Binghamton, N.Y.), Sept. 23, 2008, <http://www2.bupipedream.com/bu-students-adopt-pets-off-campus-1.1809280> (quoting worker at Humane Society discussing the fact that the organization does adopt to students but saying that "a lot of the time students who have adopted end up bringing the animals back at the end of the year"); CARROLL COUNTY HUMANE SOCIETY, <http://www.petfinder.com/shelters/GA68.html> (last visited Aug. 8, 2011) (stating that "[t]he highest concentration of stray cats in any town is always around universities because college students frequently adopt animals then leave them when they graduate or go home for the summer").

343. John C. New, Jr. et al., *Moving: Characteristics of Dogs and Cats and Those Relinquishing Them to 12 U.S. Animal Shelters*, 2 J. APPLIED ANIMAL WELFARE SCI. 83, 84 (1999); *see also* Huss, *No Pets Allowed*, *supra* note 76, at 99 & n.240 (discussing studies showing why people relinquish animals).

students attending a nearby university.<sup>344</sup> Private landlords and campus clean-up crews also report finding pets that students leave behind.<sup>345</sup>

Due to these concerns, some shelters and rescue organizations have policies stating that they will not adopt out pets to college students.<sup>346</sup> Other organizations may require a student provide additional information before an adoption is approved.<sup>347</sup> Some organizations may allow adoption to college students pursuant to their usual procedure (confirming housing status, etc.), but encourage students to consider fostering if the student is unable to make a lifetime commitment for an animal.<sup>348</sup> Other organizations will allow college students to adopt animals based on individual circumstances.<sup>349</sup>

Often the areas around college campuses have a significant problem with feral cats.<sup>350</sup> Trap-Neuter-Release (TNR) programs, which include responsible pet management programs, are one way that campus communities can reduce the number of feral cats and educate students on the importance of

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344. Hoover, *supra* note 182 (reporting on the Humane Society of Southern Arizona's experience in May 2002).

345. *Id.* (reporting on abandoned animals).

346. *E.g., id.* (stating that some "shelters will not allow college students to adopt animals"); *Adopt a Pet*, RUTLAND COUNTY HUMANE SOC'Y, <http://rchsvt.org/adoptions/> (last visited Feb. 1, 2012) (stating that it does not adopt pets to college students but an exception may be made for non-traditional students); CARROLL COUNTY HUMANE SOC'Y, *supra* note 342 (stating that it "do[es] not adopt animals to students living in temporary housing"); *see also* Shaw, *supra* note 182 (reporting on the abandonment of animals by college students and the fact that fifty to sixty percent of college "students who apply for adoption are turned down").

347. Amy Paige Condon, *Students Should Think Twice Before Adopting Pets*, DISTRICT (student webpage for Savannah College of Art and Design, Savannah, Ga.) (Nov. 9, 2009), <http://www.scaddistrict.com/?p=5555> (reporting on the Humane Society of Savannah/Chatham's policy of requiring students to complete an extra application prior to adoption).

348. Milani, *supra* note 182 (discussing services provided by the shelter and encouraging students to consider fostering); Amy Sacks, *Heading off Cat-Astrophe*, N.Y. DAILY NEWS, June 8, 2002, at 21 (discussing student fostering for the APSCA); Charlotte Sellmyer, *Animal Shelter Offers Holiday Adoption Deal*, THE EAGLE (Bryan-College Station, Texas), Dec. 9, 2007, [http://www.theeagle.com/lifestyles/Animal\\_shelter\\_offers\\_holiday\\_adoption\\_deal](http://www.theeagle.com/lifestyles/Animal_shelter_offers_holiday_adoption_deal) (last accessed Aug. 8, 2011) (encouraging students to foster dogs to get their "puppy-fix").

349. Hoover, *supra* note 182 (reporting that one shelter director argued "that her facility is more qualified than other outlets to provide the education, help, and counseling that an owner might need" and "[e]veryone who wants an animal gets one" (internal quotation marks omitted)); Schmidt, *supra* note 337 (reporting on the local humane society, which now looks at individual circumstances, although it previously "had a policy of not adopting animals to college students").

350. Sara Lipka, *The Cat People*, CHRON. HIGHER EDUC., Sept. 28, 2007, at A40 (discussing the issue of stray and feral cats at Stanford University and how a program using trap-neuter-release reduced the population).

sterilization and the problem of abandoning cats.<sup>351</sup> The alternative to TNR – that is, the traditional method of trapping and killing cats as a method of dealing with the issue generally – is unpalatable to a vocal percentage of the human population on the campus and has not been shown to be an effective management technique to stabilize or reduce the population.<sup>352</sup>

Although some organizations criticize TNR, major animal advocacy organizations endorse it, and TNR has been shown to reduce the number of cats in a geographic area.<sup>353</sup> Staff members of the universities organize many of the TNR programs.<sup>354</sup> Some programs are initiated by students themselves.<sup>355</sup> Other programs actively recruit student volunteers.<sup>356</sup> Another way to en-

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351. *How Students Can Help*, STANFORD CAT NETWORK, [http://catnet.stanford.edu/articles/cat\\_agreement.html](http://catnet.stanford.edu/articles/cat_agreement.html) (last visited Feb. 1, 2012) (educating students on sterilization and the issue of abandoned cats).

352. *See Agreement Between Stanford University and the Stanford Cat Network*, STANFORD CAT NETWORK, [http://catnet.stanford.edu/articles/cat\\_agreement.html](http://catnet.stanford.edu/articles/cat_agreement.html) (last visited Feb. 1, 2012) (setting forth the agreement between the Stanford Cat Network and Stanford University and providing some history of that agreement); *see also* Kathy L. Hughes & Margaret R. Slater, *Implementation of a Feral Cat Management Program on a University Campus*, 5 J. APPLIED ANIMAL WELFARE SCI. 15, 16 (2002) (discussing the cat population on the Texas A&M University campus and the university's attempt to eradicate them using trapping and euthanization); Lipka, *supra* note 350 (discussing the reaction when the cats on Stanford's campus were being trapped and killed).

353. *The HSUS' Position on Trap Neuter Return (TNR)*, HUMANE SOC'Y UNITED STATES (OCT. 13, 2009), [http://www.humanesociety.org/issues/feral\\_cats/facts/TNR\\_statement.html](http://www.humanesociety.org/issues/feral_cats/facts/TNR_statement.html) (advocating community-based TNR programs); *Position Statement on Feral Cat Management*, AM. SOC'Y FOR PREVENTION CRUELTY TO ANIMALS, <http://www.aspc.org/about-us/policy-positions/feral-cat-management.aspx> (last visited Feb. 1, 2012) (endorsing TNR in principle but acknowledging that there may be circumstances, such as where an endangered species are present or other circumstances, where it would not support such a policy); *see* Julie K. Levy et al., *Evaluation of the Effect of a Long-Term Trap-Neuter-Return and Adoption Program on a Free-Roaming Cat Population*, 222 J. AM. VETERINARY MED. ASS'N 42, 42, 45-46 (2003) (reporting on a program at the University of Central Florida).

354. *See, e.g., A Feral Cat Population Control Program at the University of Texas at Austin*, CAMPUS CAT COALITION (Sept. 1, 2010), <http://www.ae.utexas.edu/cats/> (discussing the TNR program on the main campus and stating fifteen years after the program began there were approximately fifteen sterilized adult cats remaining on campus, with no new litters of kitten born on campus in the past ten years).

355. *About CPCP*, CAL POLY CAT PROGRAM, [http://www.afd.calpoly.edu/facilities/cats/CPCPMain\\_files/page0001.htm](http://www.afd.calpoly.edu/facilities/cats/CPCPMain_files/page0001.htm) (last visited Feb. 1, 2012) (describing the program and the history of the program as a senior project of a student).

356. *Aggie Feral Cat Alliance of Texas*, TEX. A&M VETERINARY MED. & BIOMEDICAL SCI., <http://vetmed.tamu.edu/afcat/> (last visited Feb. 1, 2012) (providing information about the volunteer group of students and staff of Texas A&M University and reporting that the program had been largely successful in controlling the number of cats on campus); HUSKER CATS, <http://huskercats.org/> (last visited Feb. 1, 2012)

courage student activity in this area is to have an official student organization that supports the work of the nonprofit organization dealing with the cats on campus.<sup>357</sup> At schools (or for individual classes) that mandate student projects, the students can deal with aspects of the TNR program to fulfill this requirement.<sup>358</sup>

Because, by their very nature, the student population is transient, a TNR program must have some administrative support, as discontinuing the program can cause a resurgence in the cat population. The human population (whether college students or not) likely will not sterilize every cat, and some cats will be abandoned or become lost (and then multiply).<sup>359</sup> By having an active feral cat management program on campus, a university can educate its students about the importance of sterilization as well as the legal and ethical ramifications of abandonment.

In one study on pet ownership by college students, the percentage of animals that are spayed or neutered was only sixty-eight to seventy-four percent.<sup>360</sup> One of the articulated concerns over college students keeping pets is that they contribute to the overpopulation problem by not sterilizing their animals. There are widely varying estimates on the percentage of animals that are spayed and neutered nationwide. Research in 1999, using a cross sectional study of cats and dogs in the State of Texas, found that only approximately thirty percent of animals were sterilized.<sup>361</sup> Owned animals are more likely to be sterilized, with estimates of seventy-three percent of owned dogs and eighty-six percent of owned cats being spayed or neutered.<sup>362</sup> In some

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(providing information about volunteer organization of students, staff, and friends at the University of Nebraska-Lincoln who are organized to stabilize the cat population on campus).

357. See, e.g., CAT ZIP ALLIANCE, <http://catzip.org/czaaboutus.html> (last visited Feb. 1, 2012) (providing information about an organization serving the community at the University of Georgia).

358. See, e.g., *ABOUT CPCP*, supra note 355 (discussing the senior project that began the program and subsequent projects that established an adoption program, updated the shelters, and established the web page).

359. See Jared Watson, *Program Aims to Control Campus Cat Population*, EAST TEXAN (Student Newspaper of Texas A&M-Commerce, Tex), Sept. 14, 2010, <http://www.theeasttexan.com/program-aims-to-control-campus-cat-population-1.1598175> (discussing proposal to reinstitute TNR program after it had been discontinued and the increase in the cat population).

360. Shore et al., supra note 326, at 6 tbl.2. The numbers were 69.9% for low attachment owners, 67.7% for moderate attachment owners, and 73.9% for high attachment owners. *Id.*

361. Jane C. Mahlow, *Estimation of the Proportions of Dogs and Cats that Are Surgically Sterilized*, 215 J. AM. VETERINARY MED. ASS'N 640, 641 (1999).

362. AM. PET PRODS. MFRS. ASS'N, 2005-2006 APPMA NATIONAL PET OWNERS SURVEY 9, 84 (2005) (citing survey results); see also Karyen Chu et al., *Population Characteristics and Neuter Status of Cats Living in Households in the United States*, 234 J. AM. VETERINARY MED. ASS'N 1023, 1030 (2009) (reporting on a study that

cities, more than ninety percent of pet dogs and cats are sterilized.<sup>363</sup> A requirement that all companion animals on campus be sterilized can help educate students about the issue and prevent at least those animals from reproducing.

The APSCA is “cautiously supportive” of pet-friendly campus policies recognizing that students likely will have pets anyway, and a well-structured program that includes monitoring can benefit animals.<sup>364</sup> Stephens College reported that students with pets on campus “tended to be especially organized and responsible and do well academically.”<sup>365</sup> In four years, approximately 150 animals lived on the Stephens College campus, and few problems occurred.<sup>366</sup>

## VI. CONCLUSION

As the title of the Bob Dylan album and song states, *The Times They Are A-Changin'*.<sup>367</sup> Fortunately for administrators at postsecondary institutions, they have the ability to control most of the changes dealing with companion animals on campus. As discussed above, students with disabilities accompanied by service animals, as defined under federal or applicable state law, must be accommodated.<sup>368</sup> The recent ADA rulemaking that restricts the protection of the ADA to persons using service animals that are individually trained canines (and, with some limitations, miniature horses) serves to clarify the federal law on this issue.

The issue of emotional support animals or assistance animals under the FHA is a more challenging issue for administrators.<sup>369</sup> Even though an educational institution is not required to allow such animals under the ADA, given the recent activity by HUD and the DOJ applying the FHA to campus

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found that “annual family income [is] the best predictor of neuter status” of cats, and although households with respondents aged between eighteen and thirty-nine years old were less likely to have neutered cats, “age was a . . . weaker predictor of neuter status than . . . annual . . . income”). Respondents who had more formal education also were more likely to have neutered cats. *Id.* at 1026 tbl.3. This study also referenced other studies that estimated that approximately eighty percent of the kittens born each year are from stray and feral cats. *Id.* at 1030.

363. Merrit Clifton, *What Has No-Kill Accomplished?*, ANIMAL PEOPLE (Sept. 2005), <http://www.animalpeoplenews.org/05/9/whathasnokillaccomp9.05.htm>.

364. Peters, *supra* note 206 (quoting Stephen Zawistowski of the ASPCA).

365. Steinberg, *supra* note 207.

366. Peters, *supra* note 206 (reporting on the experience of Deb Duren, who had temporarily taken dogs away from two students and returned another dog to a student's parents because it had not been sterilized).

367. *The Times They Are A-Changin'*, BOB DYLAN, <http://www.bobdylan.com/songs> (last visited Feb. 1, 2012).

368. *See supra* notes 28-40 and accompanying text (discussing service animals).

369. *See supra* Part II.B.2 (discussing assistance animals).

housing, administrators should implement a policy allowing for such animals. Students with documented disabilities who can benefit from an assistance animal (but may not require a service animal) should be given the opportunity to be treated as if they were in private housing. By adopting a policy now, an institution can avoid litigation and can consider its own environment and structures to determine what will work best for the institution and the students it serves.

The issue of allowing companion animals on campus requires administrators to weigh the costs and benefits. The costs – from possible animal welfare issues, an administrative time perspective, and other risks – appear to outweigh the benefits of general student well-being and providing an opportunity to distinguish one institution from other institutions from a student recruitment standard – at least as far as allowing animals in housing for most institutions.<sup>370</sup> If an institution determines that it wishes to allow animals in housing, partnering with a local rescue organization or service dog in training organization can alleviate some of the concerns over the care of the animals and possible abandonment issues and provide an excellent opportunity for students to serve their community. Administrators can consider the policies at the institutions that have granted students this privilege to determine the best structure for their campus.

Allowing regular animal-assisted activities on campus and encouraging service activities helping animals off campus also may provide the needed outlet for students who are unable to keep an animal during this busy period of their lives. By considering these issues in advance and implementing thoughtful policies, educational institutions can prevent problems with humans and companion animals and provide for a positive environment on campus for everyone.

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370. In no way is the author advocating that institutions currently allowing animals in housing should discontinue the practice. In fact, such institutions can provide a model for the future. However, it seems unrealistic that many institutions would be willing to put forth the time and effort to “get it right,” so that the experience is positive for both the human students and the animals.