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## Lawsuit over therapy dog raises questions about university housing <sup>[1]</sup>

Submitted by Allie Grasgreen <sup>[2]</sup> on December 13, 2011 - 3:00am

A federal lawsuit <sup>[3]</sup> against the University of Nebraska at Kearney, which denied the request of a student with a psychological disability to keep a therapy dog in her university-owned apartment off campus, could signal a shift in how institutions will be expected to handle such accommodations in the future.

At issue are Kearney's decision and the process by which it was reached. The lawsuit says the university asks too much of students with psychological or emotional disabilities.

Colleges have up to this point operated under the Americans with Disabilities Act when considering requests for service animals, which perform tasks for their owners and can be essential for blind or deaf students. But the new ADA amendments that became active in March don't recognize or define "therapy animals" that may be used for emotional support -- a potentially confounding omission for Kearney and other institutions.

Kearney, in the Department of Justice's opinion, clearly should have deferred to the rules of the Department of Housing and Urban Development, the office that brought the initial charges <sup>[4]</sup> under the Fair Housing Act. Those rules, which regulate basic apartment complexes irrespective of whether they house students, define therapy animals as any used as treatment for a diagnosed condition, and say facilities that ban pets can't prohibit reasonable requests for service or therapy animals.

Kearney, like most colleges, prohibits animals in university-owned housing, and has no written policy specifically addressing service animals living with disabled students. But under Kearney's ADA Policies for Service Animals <sup>[5]</sup>, therapy animals don't even qualify -- only dogs trained and certified as service animals do.

Brittany Hamilton, the Kearney student at the center of the litigation, was taking prescribed medication for anxiety and depression that caused sleeping and breathing problems. The registered nurse who prescribed the dog said it could help by giving Hamilton a sense of stability, building her confidence and distracting her from anxiety, according to the lawsuit.

Hamilton's parents told administrators that they trained the dog, Butch, to place his paws on Hamilton's shoulders to calm her down when he sensed a forthcoming anxiety attack. But, the lawsuit notes, administrators said Butch would only be allowed if Hamilton's doctor reported the dog was trained and certified as a service animal "as

defined" by the ADA. Yet that definition explicitly states, "Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA."

Kearney denied Hamilton's request each time it was made "based solely on [its] refusal to accommodate emotional assistance animals in university housing," the lawsuit says.

But Kearney's "Psychological Documentation Guidelines," which it uses to "validate" an impairment, its impact and the need for accommodations, goes beyond those basic inquiries. Among other things, the lawsuit says, it requires: information regarding the student's treatment and prescribed medications, including a list of dosages and schedules for intake; the date of the student's last visit with the doctor and a schedule of regular visits; a list of any other doctors providing treatment; "a clinical summary which indicates the substantial life activities impaired by the disability, 'describes the extent to which these limitations would impact the academic or living environment in a postsecondary setting,' and 'provides clear evidence that the student's symptoms are present in two or more settings' "; and an explanation of how the student's limitations affect "the activities that are required in an academic environment."

Despite Hamilton's three accommodation requests submitted to the university over a four-month period, her producing medical documentation of her conditions and Butch's role in mitigating their effects, and her invitation for officials to contact her doctors and counselors, administrators repeatedly denied her requests, the lawsuit says. Hamilton had also, as requested, visited the university-recommended counseling services, and her mother submitted one request specifically noting the Fair Housing Act. But Kearney said the university was not bound by the statute.

Ada Meloy, general counsel for the American Council on Education, said HUD is "overreaching" into the academic sphere with its action against Kearney.

"Student housing is part of the educational purpose and mission of the universities. It's not the same as your basic apartment complex," Meloy said. "I think that the higher education community will be watching how this particular case might play out, and then decide whether indeed it seems that they need to conform not only to the ADA but also to the HUD regulations. And colleges and universities in general already have a very established way of dealing with students with disabilities, and I don't think that many colleges or universities would think they need additional regulation in this area."

With issues like maintenance, allergies, cleanliness and student interaction in the mix, it's not hard to imagine why officials might hesitate when faced with these requests. The lawsuit noted one Kearney administrator e-mailed another regarding the accommodation, saying it should be turned down because, "This is not a service animal but rather a pet.... Unless this animal can be classified as a service animal, we are opening a big can of worms. In essence, anyone can have their doctor say they are anxious and need to have their dog, cat, snake, or monkey, etc."

Not only did Kearney administrators consider the dog a pet, the lawsuit says, they considered the implications for future requests if Hamilton's were to be granted -- a practice that experts say is not acceptable.

"I understand the concern, but it is never legitimate to make an accommodation decision based on what other people will try to do," said L. Scott Lissner, ADA coordinator at Ohio State University and president-elect of the Association on Higher Education and Disability [7]. "In terms of determining your accommodation, the other 10 million people in the universe are irrelevant."

"I don't think anybody wants to reasonably claim that [a] therapeutic dog," Lissner said, "is really a service animal. It's not performing the kind of service that Justice has defined as a service animal. But that doesn't mean that it isn't a helpful accommodation for me to be able to reasonably benefit from a residential environment."

Kearney wasn't wrong in asking for evidence that the therapy dog was necessary, Lissner said. But under new ADA amendments and regulations, they asked too much -- which, other than the university's denying the request, is a key charge in the lawsuit. Lissner and other experts said colleges should essentially limit their inquiry to two questions: Do you have a diagnosed condition, and has your therapy animal historically been necessary for you to deal with that condition? (Documentation from a licensed physician, would, of course, be required as well.)

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A Kearney spokesman declined to comment, but the university has said it will contest the lawsuit.

Jane E. Jarrow, a consultant in disabilities and higher education and former AHEAD executive director, said the Kearney lawsuit has caused further confusion about the already perplexing topic of companion animals on campuses. Campus officials are "pretty much experts" when operating under the ADA, she said. But the Fair Housing Act? Not so much.

"I think that the colleges need to really consider long and hard whether they ought to be saying no if the student has made a good case for why it's important," Jarrow said.

"They still have the right to evaluate and say no, but they shouldn't say no out of hand. And by all reports, that's what happened at UN Kearney."

Jarrow and others said these requests are starting to come up more often, but that doesn't mean they're all legitimate. For example, Jarrow remembered one case in which a student with an anxiety disorder, which was diagnosed in February of that year, said she needed her therapy animal living with her. But the dog was six years old -- turns out, it was an old family pet, not prescribed specifically for emotional support.

While therapy animal requests are still relatively uncommon, Jarrow said, when they do arise, they're generally not approved because students do want to bring animals other than dogs into campus housing.

"You hear these weird stories about everything from ferrets to tarantulas to cats," she said. Colleges have traditionally required significant reasoning from a student who wants to bring in an emotional support animal, and that likely won't change if colleges are going to be subject to the Fair Housing Act because that legislation does not require institutions to approve just any request. "This was a student who pretty clearly needed to have that dog, because when she didn't have the dog she had to leave school.... It's really going to come down to, how severe is the need, how significant is the need? They ended up saying no to a student who really needed it."

In light of the lawsuit, Steve Waller, director of residential life at Louisiana State University and chair of the Public Policy Advisory Committee of the Association of College and University Housing Officers International, created [a white paper](#) [8] on government regulations on therapy animals in campus housing. ACUHO-I just last week created a task force to identify best practices and procedures for colleges seeking guidance. Waller said the Kearney lawsuit has prompted some institutions to come forward looking for advice on an issue that's become more prevalent in recent years. (Still, LSU hasn't received a therapy animal request in the 10 years he's worked there, Waller said.)

"I think that the sense is that we'll see more and more animals showing up on campuses, and that may be an unsupported fear," Jarrow said. "Whether or not it will truly open the floodgates remains to be seen. My guess is not."

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