



Psychiatric Service Dog Society

Agency name: Office of the Secretary, DOT
Docket number: OST-2009-0093

This letter contains the Psychiatric Service Dog Society's response to the DOT's request for comments on the recent changes to the Air Carriers Access Act regarding people with disabilities using psychiatric service animals. We address three main issues: 1) that these changes discriminate against an entire class of people with disabilities, 2) that there are no real data regarding fraudulent service animals, and 3) that abuse of the emotional support animal category is not a valid reason to discriminate against people with psychiatric service animals, and that psychiatric service dogs are no more susceptible to fraudulent activities than any other type of service animal. For reference, a short summary statement of each issue is provided, followed by an analysis of each point. Finally, we conclude with a breakdown of potential documentation requirement scenarios.

1) The new rules discriminate on the basis of disability

“The entire purpose of the ACAA, and the Department's rules implementing it, are to ensure nondiscriminatory air travel opportunities are available to people with disabilities. The service animal sections of the rule were drafted to carry out that purpose.” (p. 47903)

Summary Statement: Nondiscrimination on the basis of disability in air travel means *nondiscrimination* on the basis of disability in air travel. The new rules [sections 382.117(e) & 382.27(c)(8)] discriminate on the basis of disability because they require extra actions from people using service animals to mitigate mental illness than from people using service animals for other disabilities. Therefore, these new rules are contradictory to the purpose of the Air Carrier Access Act.

The ACAA does not allow the DOT to enact rules that provide for the disparate treatment of one disabled class of individuals relative to all other classes of disabled individuals or non-disabled individuals. The new rules clearly single out persons with mental health disabilities using service animals and establish a separate mechanism by which they will be permitted to fly. The separate mechanism constitutes a barrier to access because it requires psychiatric service animal handlers to book an appointment with their healthcare provider (if

they have one) well enough in advance of travel (4-6 weeks) so that the provider has time to produce the letter, if s/he agrees to write the letter in the first place. In Colorado, one behavioral health maintenance organization has forbidden its practitioners from writing such letters at all. Patients of these providers simply cannot fly. In addition to securing the appointment to ask for such a letter, the future air traveler must pay a doctor's office co-pay if they have insurance (approximately \$30), or pay out of pocket for the letter (minimally \$150). Next, the future air traveler must provide the letter to the airlines with a minimum of 48 hours advance notice. In contrast, persons with any other type of disability may bring their service animal on board as would any non-disabled passenger who is not accompanied by a service animal, without any documentation or advance notice, or extra expense. Such passengers are deemed to have provided 'credible verbal assurance'. This is discrimination on the basis of disability in air travel, which is expressly forbidden by the ACAA. Furthermore, requiring a person to reveal the nature of her disability is a potential legal violation of her medical privacy (via HIPPA), and is certainly a moral trespass into personal privacy. There is no adequate justification here for singling out and discriminating against one class of people with disabilities.

2) There are no real data regarding fraudulent service animals

“We seek comments from airlines and other interested persons about their experience with passengers attempting to pass off pets as service animals, especially as it may relate to ESAs and PSAs.” (p. 47905)

“Do airlines have any statistics or compilations of experience with people attempting to pass off their pets as service animals that they could share with the Department?” (p. 47905)

“Are there problems that airlines have encountered in the past with passengers initially claiming that their animal is an ESA and later characterizing that same animal as a PSA?” (p. 47905)

Summary Statement: There is no evidence of a robust dataset proving the existence of an ongoing problem with fraudulent labeling of pets as service animals or emotional support animals.

The lack of non-anecdotal data regarding pets being faked as service animals indicates there may not be a severe problem. The fact that airlines are being asked to submit data related to this problem indicates this is the case, especially since these questions were asked of the airlines after the final rule went into effect. Additionally, no airline has yet submitted any data in response, so decisions based on the assumption that there is a significant problem are premature.

3) Abuse of emotional support animal status is not a valid reason to discriminate against people with psychiatric service animals, and psychiatric service animals are no more susceptible to fraudulent activity than any other type of service animal.

“As with emotional support animals, it is possible for this category of animals to be a source of abuse by persons attempting to circumvent carrier rules concerning transportation of pets. Consequently, it is appropriate for airlines to apply the same advance notice and documentation requirements to psychiatric service animals as they do to emotional support animals.” (p. 47904)

Summary Statement: Emotional support animals are pets, not service animals. This class of pet was created and given status by the DOT. If this class of pet is causing problems, it is not the fault of legitimate psychiatric service animal handlers and they should not face additional restrictions because of it. Additionally, it is just as easy to fraudulently represent a pet as a guide animal, hearing animal, mobility assist animal, seizure alert animal, or diabetic alert animal as it is to fraudulently represent a pet as a psychiatric service animal. There is no evidence to suggest that there are more fraudulent psychiatric service animals than fraudulent service animals of any other kind.

Emotional support animals are *not* service animals. In contrast, they are pets that have been given a special status by the DOT. By allowing a person to bring an emotional support animal into the airplane cabin, DOT is allowing pets into the cabin, not service animals. No federal or state laws other than the new final rules of the ACAA designate emotional support animals (which are pets) as service animals. Service animals are trained to function appropriately in public spaces, and they are trained to provide disability-related assistance. Emotional support animals are trained for neither, and most are as well-behaved (or not) as your average pet dog. It is surprising that a class of pet (emotional support animals) would be treated the same as service animals under any law.

Secondly, the assertion that Psychiatric Service Animals are subject to more instances of ‘service animal fraud’ is unfounded. There are no validated data to substantiate such a claim. Anyone with a well-behaved pet can put on a pair of dark sunglasses and pretend to be blind, rent a wheelchair pretending to need one, or simply claim that theirs is a seizure alert or diabetic alert animal, in order to bring their pet into the cabin of the plane. There are no data to corroborate the claim that Psychiatric Service Animals are ‘faked’ more so than any other type of service animal simply because the handler’s disability is invisible. To assume that this is so in the absence of supporting data is reckless, and biased against an entire class of disabled people, namely, those of us living with mental illnesses. The framers of the ACAA wisely forbade this with a clause respecting nondiscrimination on the basis of disability.

4) Potential DOT policies regarding service animals and emotional support animals

Below is an original analysis of expected performance of policies the DOT might enact under the ACAA. This analysis is intended to provide a better understanding of the stresses to the system that each policy would exert. The table contains possible ACAA documentation requirements, the relative amounts of fraudulent service animals and emotional support animals expected under each policy, and whether such documentation requirements would be legal.

Documentation requirements	Fraudulent service animal (SA) activity	Fraudulent emotional support animal (ESA) activity	Legality
1. Require documentation for <i>all</i> service animals. <i>Require</i> documentation for emotional support animals.	<i>Minimal</i> fraudulent SA activity.	<i>Minimal</i> fraudulent ESA activity. However, since the potential number of ESAs is so much higher than the number of service animals, this minimal fraudulent activity might translate into several thousand animals each year.	Illegal discrimination on the basis of disability.
2. Require documentation for service animals assisting with <i>invisible disabilities</i> . <i>Require</i> documentation for emotional support animals.	<i>Some</i> fraudulent SA activity. People with fraudulent SAs could rent a wheelchair, purchase a guide dog harness, or otherwise fake a disability.		
3. Require documentation of service animals assisting with <i>mental illness</i> . <i>Require</i> documentation for emotional support animals.	<i>Some</i> fraudulent SA activity. People with fraudulent SAs could say their animals assist with any other disability.		
4. Require documentation for <i>no</i> service animals. <i>Require</i> documentation for emotional support animals.	<i>Some</i> fraudulent SA activity. If we assume 35,000 service animals and a high rate of fraudulent activity (10%), there could be up to 3,500 fraudulent service animals for all of the categories with some fraudulent SAs.	<i>No</i> fraudulent ESA activity.	Legal difference in treatment of emotional support animals (pets) and service animals.
5. Require documentation for <i>no</i> service animals. <i>Exclude</i> emotional support animals from in-cabin air travel.			
6. Require documentation for <i>no</i> service animals. <i>Do not require</i> documentation for emotional support animals.		<i>Some</i> fraudulent ESA activity. Since there are so many potential ESAs, this might translate into tens of thousands of animals.	Legal , but could lead to larger amount of fraudulent activity.

It is important to note that fraudulent activity is still possible, even when documentation is required, through forgery or deception of one's doctor. The single greatest threat in terms of fraudulent animal travel is in the emotional support animal category since the potential number of emotional support animals is so high. Any pet of any person with a mental illness by the DOT's description could be classified as an emotional support animal. Any percentage of fraudulent activity among emotional support animals will translate to very large numbers of fraudulent ESAs, simply because the size of the emotional support animal population is so large to begin with.

Items numbered 1-3 in the table are policies that violate the ACAA because they discriminate on the basis of disability. Item 6 (requiring no documentation for any category) does not violate the ACAA, but neither is it a realistic policy considering the DOT's concern regarding fraudulent activity. Only items 4-5 are realistic and adhere to the nondiscriminatory purpose established by the ACAA.

Discrimination on the basis of disability in air travel is illegal. This is the standard by which all accessibility policies in air travel should be evaluated. **Consequently, there are only two options available to DOT on this issue.** Item 4 would require documentation only for emotional support animals. This is how things were prior to May 2009. Or, as described in item 5, emotional support animals could be excluded from the DOT 'service animal' category entirely since emotional support animals are in actuality pets. Under either policy, there would be no documentation requirement for service animals that are trained to provide disability-related assistance to a disabled passenger.

In terms of the impact of item 5 upon mental health consumers who have benefited from the emotional support animal category, we encourage them to consider training a psychiatric service animal for themselves. While it is not possible for every emotional support animal, reaching that higher standard of training for psychiatric service animals is necessary for safe public access work, and it is a very rewarding partnership for human and canine alike.

In conclusion, the changes to the ACAA discriminate on the basis of disability. In addition, the changes are not warranted given the lack of non-anecdotal data on fraudulent service animal or emotional support animal usage. Finally, fraudulent emotional support animal usage is not a valid reason for discrimination against psychiatric service animal users, and psychiatric service animals are no more susceptible to fraudulent service animal activity than any other type of service animal. There are only two legal options for documentation requirements for service animals and emotional support animals. Both of these options require *no* documentation for service animals of all types. Documentation can be required for emotional support animals, or the DOT can eliminate this category of pet for in-cabin travel.