

DOT BACKGROUND DOCUMENT ON ESA FOR DISCUSSION BY ACCESS COMMITTEE

DOT's 1996 Guidance on Service Animals in Air Transportation

On November 1, 1996, the Department issued its initial Air Carrier Access Act (ACAA) guidance document on service animals in air transportation. See *Guidance Concerning Service Animals in Air Transportation*, 61 FR 56409, 56420 (November 1, 1996). The document was based on the Department of Justice's (DOJ) Americans with Disabilities Act (ADA) 1996 guidance concerning the access of service animals to places of public accommodation. See *Commonly Asked Questions About Service Animals in Places of Business*, U.S. Department of Justice (July 1996) at <http://www.ada.gov/qasrvc.htm>. The DOT guidance was intended to help U.S. carriers and passengers understand how to respond to service animal issues in the air travel context. In that guidance document, DOT defined a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. See 61 FR 56409, 56420. The Department also specifically addressed situations in which an individual with a mental or emotional disability states that being accompanied by an animal is necessary for his or her emotional well-being. See *Id.* at 56421. We noted that "the assertion of a passenger that an animal remaining in his or her company is a needed accommodation to a disability may often be difficult to verify or to distinguish from the situation of any person who is fond of a pet." See *Id.* For this reason, DOT took the position that in situations where an animal is necessary for the emotional well-being of an individual with a mental or emotional disability it would be reasonable for airline employees to request appropriate documentation of the individual's disability and the medical or therapeutic necessity of the passenger traveling with the animal. See 61 FR 56409, 56421. We further noted that an animal providing emotional support, like any service animal, must be trained to behave properly in a public setting. See *Id.*

Abuses in the System

After the 1996 service animal guidance document, DOT became aware of the potential for abuse by certain members of the public pretending that a pet is a service animal. We decided to carefully monitor comments and complaints to determine if there was a need to modify the 1996 guidance and possibly the rule. U.S. airlines began relating incidents to the Department about passengers with no apparent disability who claimed that the animals accompanying them were emotional support or psychiatric service animals. U.S. carriers expressed frustration about the number of instances in which attempts to obtain credible verbal assurance from such passengers were met with a hostile refusal or an inability to explain how the animals assisted them with their disabilities. Carriers also reported incidents of inappropriate behavior in the terminal or aircraft cabin by animals that the owners had claimed were emotional support or psychiatric service animals, but which the carriers believed, based on their behavior, were actually pets. The Department recognized the challenge U.S. carriers faced in ascertaining the credibility of verbal assurances from individuals with no obvious disability accompanied by service animals. In response to these challenges, the Department revised the 1996 service animal guidance and reissued it in 2003 with more detailed guidelines for U.S. carriers on discerning the status of an animal presented by a passenger and on carrier obligations regarding the transport of

service animals in unusual situations. See *Guidance Concerning Service Animals in Air Transportation*, 68 FR 24874 (May 9, 2003).

DOT's 2003 Guidance on Service Animals in Air Transportation

In 2002, at the request of DOT, the National Council on Disability and the Air Transport Association (now Airlines for America) jointly convened a working group of interested stakeholders to address service animal issues. DOT invited the working group, which included representatives from service animal groups, U.S. carriers, and U.S. airports, to develop a draft guidance document on service animals for possible adoption. The working group submitted a draft in late 2002 that proposed to substantially expand and revise the 1996 DOT service animal guidance. In May 2003, the Department issued updated DOT service animal guidance based largely on the working group draft with some modifications. A primary objective of the updated guidance was to help prevent or minimize instances of pet owner fraud by providing clearer guidelines to U.S. carriers and service animal users. In the 1996 service animal guidance, for example, DOT had stated that it might be reasonable for a U.S. carrier to request documentation of an individual's disability and the medical or therapeutic necessity of traveling with an animal that did not appear to perform any visible function. In the 2003 guidance, DOT made clear that U.S. carriers could, as a routine practice, require individuals traveling with emotional support animals to provide current documentation from a mental health professional as a condition for accepting the animal for transport in the cabin. We said that the carrier could require that the documentation be on letterhead from a mental health professional, that the documentation not be more than one year old and state that: (1) the passenger has a mental health-related disability; (2) having the animal accompany the passenger is necessary to the passenger's mental health or treatment or to assist the passenger (with his or her disability); and (3) the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care. Although the 2003 guidance did not explicitly authorize U.S. carriers to require documentation for psychiatric service animals, it was our intention that the guidance apply equally to psychiatric service animals.

DOT's 2008 Final Rule

In 2008, the Department amended its Air Carrier Access Act rules to, among other things, apply to foreign air carriers. See 73 FR 27614 (May 13, 2008). With regard to service animals, many foreign air carriers commented that they have policies that are more restrictive than those of the ACAA (e.g., only dogs, or only dogs certified by recognized training schools). These commenters generally wished to maintain such restrictions. *Id.* at 27635. DOT ultimately decided not to apply the requirement to carry service animals other than dogs to foreign airlines. *Id.* at 27636 and 27679. However, DOT made clear that foreign carriers could not impose certification or documentation requirements for dogs beyond those permitted to U.S. carriers. *Id.* at 27636. U.S. carriers continue to be required to transport all service animals except for certain unusual service animals (e.g., snakes, other reptiles, ferrets). *Id.* at 27679.

As for emotional support animals, some service animal advocacy groups questioned their status as service animals. Carriers also raised concerns that permitting emotional support animals to travel in the cabin would open the door to abuse by passengers wanting to travel with their pets. In response, DOT added safeguards to reduce the likelihood of abuse. We added language in the regulatory text that the use of emotional support or psychiatric service animals is limited to persons with a mental or emotional disorder that is recognized in the Diagnostic and

Statistical Manual of Mental Disorders. We also specified in the rule text that U.S. and foreign air carriers may insist on current documentation from a licensed mental health professional that the passenger is under his or her professional care and needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination. In order to permit the assessment of the passenger's documentation, the rule also allows carriers to require passengers traveling with emotional support or psychiatric service animals to provide 48 hours advance notice and check-in one hour before the check-in time for the general public. See *Id.* at 27636 and at 27671.

Divergence in DOT and DOJ Definitions of Service Animal

Although DOT recognized in the 1996 DOT guidance document that an animal, by its presence alone, may provide assistance to an individual with a disability, DOJ did not directly address this issue then. The service animal definition in DOJ's ADA title III regulation in effect at that time defined service animal as any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. See 28 CFR § 36.104 (July 26, 1991). In 2010, DOJ acknowledged the legitimacy of service animals that perform specific tasks for individuals with psychiatric and emotional disabilities but explained its intent to exclude emotional support animals from coverage under the ADA from the time that the original title III regulation was promulgated. See 75 Fed Reg. 56236, 56269 (September 15, 2010). DOT's position on emotional support animals, on the other hand, was based on the observation that such animals, by their presence, play a distinct role in enabling people with certain emotional and psychiatric disabilities to manage their symptoms and function more effectively in everyday life. In the early years after the ACAA rule was initially promulgated, it became apparent that there were even more ways in which animals could help to mitigate the effects of disability than we previously realized. Increasingly, for example, individuals with hidden disabilities such as epilepsy, diabetes, and cardiac disorders were showing up at airports with service animals that assisted them by alerting them to oncoming seizures, a drop in blood sugar level, or an episode of arrhythmia. Many of these animals had never been specifically trained to detect or respond to these events. Nevertheless, their innate ability to do so put the owner on notice well enough in advance to prepare for or prevent an imminent adverse medical event. In the Department's view, while this type of assistance does not arise from task training, it clearly enables individuals to take action to mitigate the effects of their disabilities.

This contrast between DOJ's view that performance of trained tasks to assist with a disability alone distinguishes a service animal from a pet, and DOT's recognition that the presence or innate ability of some animals may also provide assistance to certain individuals in managing their disabilities, means that there could be differences in the acceptance of certain animals as "service animals" in the airport environment. For example, an emotional support animal that an airline must accept under the ACAA could be denied entry at airport restaurants or stores as DOJ Title III rules for places of public accommodations are applicable to those entities.