



ST. MARY'S
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The Scholar: St. Mary's Law Review on Race
and Social Justice

Volume 14 | Number 4

Article 3

12-1-2012

Service Animals in Training and the Law: An Imperfect System.

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NOTE

SERVICE ANIMALS IN TRAINING AND THE LAW: AN IMPERFECT SYSTEM

DARCIE MAGNUSON*

I. Introduction..... 989

* I was born and raised in Colorado. After attending Loyola Marymount University in Los Angeles, California where I majored in Philosophy and Spanish, I did a year of AmeriCorps with the “I Have a Dream” Foundation of Boulder County where I helped coordinate an afterschool homework help program for low-income at risk eighth graders. Upon graduation from law school at Gonzaga University I became licensed to practice law in Colorado, and I look forward to wherever my legal career will take me.

ACKNOWLEDGMENTS: First and foremost, thank you to Jeanette, the guide dog puppy I trained. I am very grateful to have had her for a short fourteen months. She was my constant companion during a very stressful time in my life, and her unwavering love and affection helped me cope with the stresses of law school and being far away from my family. I am proud to report that she is now a working guide dog living in New York. I still maintain contact with her new owner, and I hope to raise another guide dog puppy in the future.

Thank you to Professor Lynn Daggett, J.D., PhD, who provided me with unending guidance and support throughout the writing process. I would not have been able to finish this Note without her expertise, beneficial suggestions, and continuous editing. I am incredibly grateful for her time and words of encouragement. She is truly one of the best role models and educators I have ever had.

Thank you to my mom, Dianne Primavera, who dedicated the majority of her career to working with and helping people with disabilities. Through her employment and friendships, she exposed me early on to the immeasurable value of service animals. These exposures are the reasons why I decided to train a service animal. My mom will always be my best friend and hero.

A special thanks to Mikelyn Ward, the leader of the puppy raising club in Spokane, who coached me throughout Jeanette’s training and socialization process. Mikelyn has been a dedicated volunteer for Guide Dogs for the Blind for many, many years and has trained more than ten puppies. Mikelyn never gave up on Jeanette (or me) despite the fact that I was a new raiser and Jeanette was a difficult puppy, and for that, I am thankful.

Thank you to my friend Sarah who took care of Jeanette when I was unable to and who supported me throughout law school and the training process.

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Thank you to Guide Dogs for the Blind for its commitment to helping people with visual impairments and its commitment to providing the best care and treatment for each and every one of its dogs. As a dog lover, I greatly respect how well the dogs are treated throughout their entire lives and how what is best for the dogs is of the utmost importance.

Thank you to Gonzaga University School of Law for accommodating and welcoming Jeanette.

Last but not least, thank you to *The Scholar: St. Mary's Law Review on Minority Issues* for your dedication to speaking on behalf of minorities and providing them with a platform for their issues to be heard. It was a pleasure to work with you.

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I. INTRODUCTION

When I attended my first meeting with the local guide dog puppy-raising club to learn more about raising a guide dog puppy, I was beyond excited to learn the ropes, to meet the group members, and above all, to meet the cute and cuddly puppies in training. At the time, I was a second-year law student. My world revolved around a demanding curriculum and work schedule—reading cases, writing memorandums, eating free pizza at school functions, praying I would not get called on in class, and volunteering as a law clerk at the Office of the Attorney General.

I met the group in the local bus plaza for one of their monthly outings. The meeting consisted of walking around the bus plaza to familiarize the

puppies with going up and down stairs, exposing them to elevators, and walking to the nearby park to see how they responded to various distractions. I had spent a significant amount of time researching the responsibilities of a puppy-raising volunteer before I inquired into raising one, yet I was still overwhelmed with the information provided by the group leader regarding the necessary amount of training and socialization required.

One thing in particular the group leader informed me of was an unwelcome surprise: that in Washington State, the puppies in training are legally not entitled to enter facilities where the general public and service animals are permitted. Although some places with public accommodations do not object to service animals in training inside their premises, the group leader made sure I understood that if I was ever asked to leave an establishment, I needed to leave without protest.

Being a law student, I wanted to verify what the group leader had explained about the law. After some preliminary research, I quickly confirmed that the Americans with Disabilities Act (ADA) does not provide protection for service animals in training anywhere in public, including workplaces and government buildings.¹ Instead, individual state statutes may or may not grant service animals in training access to places of public accommodations, public buildings, or places of employment. Similarly, neither the Air Carrier Access Act (ACAA)² nor the Fair Housing Act Amendments (FHAA)³ afford rights and privileges in air transportation and housing, respectively, to service animals in training.

The value service animals provide to people with disabilities is immeasurable. Without service animals, many individuals with disabilities would not be able to fully participate in many activities and equally access society. Without extensive, community-based training, there would be no service animals. However, the current federal laws do not include the appropriate legal protections for service animals in training that are necessary to make the community-based training system work. There-

1. Letter, *Re: Service Animal Trainers*, 12 NAT'L DISABILITY L. REP. 47 (1997).

2. See 49 U.S.C. § 41705 (2006) (codifying the prohibition of "[d]iscrimination against handicapped individuals" by providers of air transportation). The statute states that:

In providing air transportation, an air carrier, including . . . any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds:

- (1). the individual has a physical or mental impairment that substantially limits one or more major life activities.
- (2). the individual has a record of such an impairment.
- (3). the individual is regarded as having such an impairment.

Id. at (a).

3. See *id.* § 3604(f)(1) (providing the requirements for what constitutes discrimination in the context of renting or selling housing).

fore, it is critically important to provide service animals in training the same protections given to fully trained service animals. To achieve this goal, the ADA, the ACAA, and the FHAA must be amended to provide service animals in training with access to workplaces, transportation, and places of public accommodation equivalent to those already provided to trained service animals.

Part II of this Note offers some general information about organizations that train service animals, focusing mainly on the Guide Dogs for the Blind training program and its reliance on puppy-raising volunteers. In order to understand the current status of the laws and why these laws need to be amended, Part III of this Note surveys both federal and state statutory protection for service animals in training. Part IV of this Note examines the problems created by the current approach. Finally, Part V explains why a uniform national approach is needed to address these problems, and proposes specific language to amend the ADA, the ACAA and the FHAA to provide service animals in training with equivalent protection to those already in place for service animals.

II. BACKGROUND INFORMATION

The underlying policy of the ADA is its assurance that persons with disabilities will have full and equal access to society. In order for certain persons with disabilities to achieve this full and equal access to society, they require the assistance of a service animal. Consequently, it is necessary for service animal trainers to be able to properly train and adequately socialize these animals before they take on their role as a trained service animal. In order to guarantee service animals in training will be allowed wherever they will be required to go when they are working for a person with a disability, legal intervention is required.

There are many organizations throughout the United States and worldwide that train service animals.⁴ Because there are too many nongovernmental organizations to discuss each one in depth, this Note will focus primarily on Guide Dogs for the Blind (GDB), a well-known and well-established nonprofit organization that exclusively trains seeing eye dogs for persons with visual impairments. While GDB is a good example of an organization with an extensive history and a multistate training program, it is also a good example because its training program relies heavily on the commitment of dedicated puppy-raising volunteers to sustain its

4. See *Living with Disability, Service Animals and Companion Dogs*, FAM. VILLAGE, <http://www.familyvillage.wisc.edu/general/servdogs.htm> (last updated July 1, 2009) (listing a variety of establishments that provide and train service animals across the United States). The groups available for service training include everything from guide horses for the blind to specially bred dogs for disabilities other than blindness. *Id.*

ongoing success. Thus, a close look at the GDB training program will underscore the importance of amending federal legislation to make sure service animals in training are afforded protection under the law.

A. *The Purpose and Underlying Policy of the Americans with Disabilities Act (ADA)*

The purpose of the ADA is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and to ensure that persons with disabilities are able to enjoy full and equal access to society.⁵ The ADA and its regulations accomplish this by prohibiting employers, government agencies, providers of public transportation, and places of public accommodations from discriminating against people on the basis of a disability.⁶ Similar protections are afforded by other federal legislation such as the Fair Housing Act Amendments (FHAA)⁷ and the Air Carrier Access Act (ACAA).⁸ By prohibiting discrimination and mandating certain reasonable accommodations, persons with disabilities are more able to fully and equally access society.

B. *The Role of Service Animals in Furthering the ADA*

One way the Americans with Disabilities Act and the regulations assist the disabled in achieving equal access is giving persons with disabilities the right to be accompanied by a service animal in places of employment, in government buildings with public access, on public transportation, and in places of public accommodation.⁹ Service animals assist persons with

5. 42 U.S.C. § 12101(b)(1) (2006).

6. *A Guide to Disability Rights Law*, U.S. DEP'T OF JUST. (Sept. 2005), <http://www.ada.gov/cguide.htm#anchor62335>.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered. *Id.*

7. See 42 U.S.C. § 3604(f)(1) (establishing the unlawfulness of discrimination in the sale or rental of a house because of the disability of the buyer or renter, or someone associated with them). Additionally, the FHAA provides for the unlawfulness of discriminating in the terms, conditions, or privileges of the sale or rental of a dwelling based on the handicap of that person, or someone associated with them. *Id.*

8. See 49 U.S.C. § 41705 (2006) (creating a separate violation for each act of discrimination by air carriers).

9. See generally *id.* § 12101(b)(4) (describing the desire to use congressional authority to address the day-to-day discrimination people with disabilities face); 28 C.F.R.

disabilities in activities of everyday life, “providing their human companions with greater independence and a higher quality of life.”¹⁰ Each service animal is specifically and professionally trained to meet the needs of the person it assists.¹¹ For example, service animals are capable of being trained to retrieve objects, pull a wheelchair, open and close doors, bark to alert their handler, provide stabilization to help a person walk, as well as many other tasks.¹² Without extending the protections of the ADA and its regulations for service animals to service animals in training, persons with disabilities may be harmed and their access and enjoyment of society may be hindered.¹³

§ 35.101–102 (2006) (explaining the purpose of the statute in enforcing the ADA’s prohibition on discrimination and applying the provisions to “all services, programs, and activities provided or made available by public entities”); 28 C.F.R. § 36.101 (implementing the prohibition of discrimination in public accommodations and providing guidelines for the construction of commercial facilities that comply with accessibility standards).

10. Lori Batcheller, *Service Dogs Help People with Disabilities Gain Independence*, DISABOOM, <http://www.disaboom.com/service-animals/service-dogs-help-people-with-disabilities-gain-independence> (last visited Mar. 5, 2012). Service dogs can assist individuals with a wide range of disabilities, including carrying items in a backpack for someone, responding to seizures and dialing 911 from a console, and providing a calming influence for people with psychiatric disabilities. *Id.*

11. *Id.* It is necessary to note that:

Not every dog is cut out for this special line of work. Service dogs must be intelligent, willing workers, large enough for the task—for instance to comfortably fit in a harness to guide a blind person—yet small enough to be easily controlled and fit comfortably under restaurant tables and on buses and other forms of public transit. They also must be able to ignore all distractions while doing their work.

Id.

12. *Id.* In discussing service dog requirements the author states that:

Service dogs are either rescued from animal shelters or bred in selective breeding programs and raised by volunteers for the first year to year and a half of their life prior to their formal training. Training most often takes place at a training center, although in-home training has become increasingly popular. Dogs are generally provided to owners with disabilities at little to no cost since training organizations are generally funded through private donations.

Id.

13. No one knows exactly how many people with disabilities use service animals, but Erin Sember, M.A., the ADA Technical Assistance Coordinator at Cornell University, created and hosted a webinar on “Service Animals: The Legal and Practical Issues.” ERIN SEMBER, DISABILITY & BUS. ASSISTANCE CTR.–NE., *SERVICE ANIMALS: THE LEGAL AND PRACTICAL ISSUES* (Apr. 2010), available at <http://www.ilr.cornell.edu/edi/media/DBTAC/2010-04-22/DBTAC%20Next%20Steps%20Webinar%20-%20Service%20Animals%20-%2004.22.2010.pdf>. She researched the available service animal registries to estimate that there are roughly 15,000 to 20,000 active service animals in the United States as of April 2010. *Id.* Still, since service animals do not legally need to be registered it is hard to say with certainty how many are actively assisting people with disabilities in the United States. Civil Rights Div., *Commonly Asked Questions About Service Animals in Places of Business*, U.S. DEP’T OF JUST., <http://www.ada.gov/qasrvc.htm> (last visited Oct. 13, 2010).

C. *How Do People Who Need Service Animals Get Them?*

Because the government does not train or provide service animals, the only way persons with disabilities are able to obtain a service animal is from nongovernmental organizations, people that individually train service animals, or to train their own service dog.¹⁴

The non-governmental organizations responsible for training service animals are usually nonprofit organizations that rely heavily, if not entirely, on the support and commitment of volunteers and donors.¹⁵ The estimated costs associated with training a service animal can range anywhere from \$15,000 to \$50,000 per service animal.¹⁶ Oftentimes nonprofit organizations provide the service animals to persons with disabilities at no cost to the individual.¹⁷ In addition to providing the service animal at no cost, some organizations like Guide Dogs for the

14. See *Service Dogs: Selecting a Service Dog to Train for Service Work*, DIAMONDS IN THE RUFF, http://www.diamondsintheruff.com/service_dogs.html (last visited Feb. 11, 2012) (reiterating that the only way to obtain a service dog is through a non-governmental organization or to independently train one).

15. See Gloria Gilbert Stoga, *A New Leash on Life*, PUPPIES BEHIND BARS, <http://www.puppiesbehindbars.com/about.asp> (last visited Mar. 5, 2012) (describing a nonprofit organization in New York that places puppies with inmates in New York correctional facilities who train and socialize the puppies to become service dogs). *Id.* Even though Puppies Behind Bars relies on the inmates to train the service dogs, it pays all of the costs associated with raising the puppies. *Id.* This is true for other nonprofit service animal training organizations like Guide Dogs for the Blind, Paws with a Cause, Patriot Paws, Canine Support Teams, Inc. etc. See, e.g., *Service Dog Training Program*, PATRIOT PAWS SERV. DOG, <http://www.patriotpaws.org/programs.html> (last visited Mar. 5, 2012) (a nonprofit organization that is currently focusing on the “development of a prison program to train inmates to become trainers of service dogs”); PAWS WITH A CAUSE, <http://www.pawswithacause.org/Home/tabid/616/Default.aspx> (last visited Mar. 5, 2012) (a nonprofit organization that focuses on “train[ing] Assistance Dogs nationally for people with disabilities and provid[ing] lifetime team support which encourages independence”); *Puppy Raiser Program*, CANINE SUPPORT TEAMS, INC., http://www.caninesupportteams.org/puppy_raiser.html (last visited Feb. 11, 2012) (a nonprofit organization that “provide[s] specially trained assistance/service dogs to people with disabilities” and relies heavily on volunteer puppy-raisers).

16. See List of Statistics, Guide Dogs for the Blind (Sept. 15, 2010) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (estimating the direct cost of a trained guide dog to be \$48,116 for the fiscal year of 2010); *Client Application*, POWER PAWS ASSISTANCE DOGS, <http://www.azpowerpaws.org/Default.aspx?tabid=399> (last visited Mar. 11, 2012) (estimating the cost of a trained assistance dog to be \$15,000); *Service Dog Training by Patriot Paws*, PATRIOT PAWS SERV. DOGS, <http://www.patriotpaws.org/> (last visited Mar. 5, 2012) (estimating the cost of a trained service dog to be \$20,000 to \$30,000).

17. See *About Us: A New Leash on Life*, PUPPIES BEHIND BARS, <http://www.puppiesbehindbars.com/about.asp> (last visited Mar. 5, 2012) (indicating that they pay “100% of all costs”); *Training with a Guide Dog*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=programs_adult_mobility (last visited Mar. 5, 2012) (stating that services are all free).

Blind will also pay for the cost of transportation for the individual to travel to and from the training campus to pick up their service animal, as well as room and board during a two-week training period to ensure that the new team will be compatible.¹⁸ However, some organizations are unable to provide trained service animals free of charge.¹⁹

To get a trained service animal, a person with a disability must first find a non-governmental organization that trains service animals to meet the individual's specific needs. The second task is generally an application process. Some organizations have the applications available electronically on their websites²⁰ while others provide the applications only upon request.²¹ In addition to submitting an application, some organizations require the applicant to pay a non-refundable application fee.²² The next step in the process is review of the applications, which may consist of interviewing the applicant and conducting a home visit to ensure the person's residence is suitable for a service animal.²³ Upon approval, the individual is usually placed on a waiting list and may wait up to five years before receiving the requested service animal.²⁴ Finally, the individual travels to wherever the organization is located, and receives specialized training for one to three weeks on how to work with that particular ser-

18. *Training with a Guide Dog*, *supra* note 17; but see *Applicant Process—Ten Steps Toward Increased Independence*, ASSISTANCE DOGS OF AM., INC., <http://www.adai.org/needdog/applicationprocess.html> (last visited Mar. 5, 2012) (requiring payment of an application fee, transportation to and from the organization to pick up the service dog, as well as equipment for the dog).

19. See *Client Application*, *supra* note 16 (stating that the organization uses donations to pay approximately half of the costs associated with training the assistance dogs and requires the person with a disability to pay between \$6,000 and \$7,000).

20. See *Applying for a Canine Assistants Dog*, CANINE ASSISTANTS, <http://www.canineassistants.org/forms-applications/apply-for-a-dog.html> (last visited Mar. 5, 2012) (providing information about obtaining a service dog, including links to a medical history form as well as the general application).

21. See *Client Application*, *supra* note 16 (requiring a written request, a brief autobiography, why an individual would like a service dog, and a \$25 non-refundable application fee).

22. See *Applicant Process—Ten Steps Toward Increased Independence*, *supra* note 18 (requiring a \$50 nonrefundable application fee).

23. See *Service Dog Application*, PATRIOT PAWS SERV. DOGS, www.patriotpaws.org/service-dog-application.html (last visited Mar. 5, 2012) (indicating on the application that the organization may refuse to provide a service dog at any time, including during an in-home visit).

24. See *Applicant FAQ*, ASSISTANCE DOGS OF AM., INC., <http://www.adai.org/need-dog/applicantfaq.html> (last visited Mar. 5, 2012) (notifying applicants that the current wait time is between eighteen and twenty-four months); *Applying for an Assistance Dog*, *supra* note 20 (stating that the waiting list for a dog is up to five years).

vice animal.²⁵ After completion of the program and, sometimes, a graduation ceremony, the new team is sent on their way and will often receive continued support from the organization.

D. *Information About Guide Dogs for the Blind, and Current Program Statistics*

Guide Dogs for the Blind (GDB) is one of twelve dog training schools within the United States that is accredited by the International Federation of Guide Dog Schools.²⁶ The Mission Statement declares: "Guide Dogs for the Blind provides enhanced mobility to qualified individuals through partnership with dogs whose unique skills are developed and nurtured by dedicated volunteers and a professional staff."²⁷

In the seventy years since GDB's incorporation, more than 10,000 guide dogs have graduated from its training program and, as of December 2010, there were 2,203 active Guide Dogs for the Blind teams and over 1,000 puppy-raising volunteers working within the United States.²⁸ GDB is a nonprofit organization, and its trained guide dogs are provided at no cost to qualified visually impaired individuals thanks to generous donors and dedicated volunteers.²⁹ The ongoing success of GDB can be

25. See *Application Information*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=programs_adult_apply (last visited Mar. 5, 2012).

26. *Frequently Asked Questions*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=about_overview_faq (last visited Mar. 5, 2012). In the early 1940s and the early stages of World War II, Lois Merrihew and Don Donaldson aspired to create a school to train guide dogs that would assist wounded servicemen with visual impairments as they returned from the war. Their dreams became a reality when Guide Dogs for the Blind (GDB) became incorporated in 1942. *An Overview of Guide Dogs for the Blind*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=about_overview (last visited Mar. 5, 2012). Soon after, Blondie, a German Shepherd rescued from the local shelter, was one of the first dogs to complete the training program and to be paired with a returning veteran. *Id.* By 1947, GDB expanded and moved to an eleven-acre campus in San Rafael, California. *Id.* In 1995, GDB opened its second campus in Boring, Oregon. *Id.* It is sad to think that Lois Merrihew's lifelong dream of becoming a dog trainer was almost quashed by a dog training school on the East Coast because she was a woman, and one of the trainers told her that women "were not considered physically or emotionally fit for such work." *Id.* She turned this setback into motivation to accomplish her dream, and she partnered with Don Donaldson, a dog trainer, and Hazel Hurst to form the Hurst Foundation, the predecessor to GDB. *Id.*

27. *Our Mission*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=about_overview_mission (last visited Mar. 5, 2012).

28. List of Statistics, *supra* note 16 (stating that during the fiscal year ending June 30, 2011 Guide Dogs for the Blind program had 2,196 active teams). A guide dog team consists of a trained and working guide dog and its handler. *Id.*

29. *Frequently Asked Questions*, *supra* note 26.

attributed to the vision and values of the organization and the recognition of the beneficial power of the human-animal bond.³⁰

The GDB's *Puppy Raising Manual* says it best: "It takes a lot of people to produce a successful Guide Dog team."³¹ For example, by the time the guide dog graduates from the program, the dog will have worked with several puppy-raising volunteers, with the group leader of the local club, with the community field representative, and also with multiple professional dog trainers.³² This Note focuses strictly on the role of the puppy-raising volunteers.

E. *What Are the Roles and Responsibilities of a Guide Dog Puppy-Raising Volunteer?*

A puppy-raising volunteer is a person, a family, or a group of people who commit to raising a guide dog puppy by providing food, care, basic obedience training, and socialization.³³ GDB currently has 1,400 puppy-raising volunteers each belonging to one of 141 puppy-raising clubs throughout Arizona, California, Colorado, Idaho, Nevada, Oregon and Utah.³⁴

Before someone can commit to raising a guide dog puppy, GDB requires the prospective puppy-raiser to connect with a nearby puppy-raising club and to attend the club's regularly scheduled meetings.³⁵ Each of the local puppy-raising clubs functions slightly differently, but they generally meet twice a month. During one of the meetings, the group goes on an outing to a store, restaurant, park, or similar public place, and the other meeting will be at a local community building or recreation center where the group leader can review, demonstrate, and explain GDB training techniques.³⁶ At the meetings the interested puppy-raisers are given an opportunity to work with the puppies to learn how to properly handle them, and after attending several meetings, the group leader conducts a home visit to determine whether the potential puppy-raiser's home is

30. *Our Mission*, *supra* note 27.

31. GUIDE DOGS FOR THE BLIND, FACT SHEET: HELPFUL INFO FOR POTENTIAL PUPPY RAISERS (n.d.), available at http://www.guidedogs.com/site/DocServer/Puppy_Raiser_Info.pdf?docID=3169 [hereinafter FACT SHEET].

32. *Id.*

33. See *Puppy Raisers*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=help_volunteer_puppy (last visited Mar. 5, 2012) (stating that any person who is interested in raising and caring for a guide dog puppy can become a volunteer).

34. *Id.*

35. *Id.*

36. *Id.* GDB does not require any prior dog training experience before becoming a puppy-raiser. *Id.*

safe, secure, and suited for a puppy.³⁷ Once the above is completed the prospective puppy-raiser takes one of the puppies home for several days to see what it is like to have a guide dog puppy in the home. Finally, the hopeful puppy-raiser submits an application to GDB, and upon approval of the application the puppy-raiser anxiously awaits the arrival of the puppy for which they will be entrusted to raise.

After the volunteer receives the puppy, the individual is required to attend the regularly scheduled meetings so the group leader can track the progress of the puppy and correct any behavioral issues as they arise.³⁸ A majority of the training and socialization happens naturally as it is suggested that the puppy-raiser take the puppy everywhere with them.³⁹ Because of this consistent social activity, the puppy-raising volunteers are able to socialize the puppies in settings similar to the ones they will be working in as adult guide dogs—settings that even a well-equipped GDB campus could not offer as part of its training.

The puppy-raiser is required to fill out a monthly report detailing where the puppy went on outings, any concerns the raiser has with the puppy's training, and any improvements the raiser has noticed with the puppy. Finally, the puppy-raisers typically commit to keep the puppies from the time they are weaned until they are sent to school for formal training when they are fourteen to eighteen months old.⁴⁰ In addition, some of the local puppy-raising clubs participate in fundraising events to purchase toys for the new puppies, kennels, other supplies, and to pay the travel expenses for the puppy-raiser to attend the graduation ceremony at the GDB facility when the puppy successfully completes the training program.

F. *What Does It Take For a Puppy to Become a Guide Dog?*

After the puppies are whelped,⁴¹ they stay at the California or Oregon GDB campus until they are weaned, usually between eight and ten weeks old.⁴² Then they are placed in the home of a puppy-raising volunteer

37. See FACT SHEET, *supra* note 31 (providing that GDB representatives conduct home interviews prior to handing out a GDB puppy for a puppy-raising volunteer).

38. *Puppy Raisers*, *supra* note 33.

39. See *Guide Dog Puppy Raising Program*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=programs_dog_puppy (last visited Mar. 6, 2012) (indicating that the puppies “accompany their raisers just about everywhere”).

40. *Id.* However, some of the puppies will be transferred for any number of reasons, which means the time commitment for puppy-raisers will vary on occasion. *Id.*

41. A verb meaning to give birth to a dog or wolf. *Whelp*, THEFREEDICTIONARY.COM, <http://www.thefreedictionary.com/whelped> (last visited Mar. 3, 2012).

42. *Guide Dog Puppy Raising Program*, *supra* note 39.

where they remain until they are mature and ready for formal training.⁴³ From there, the puppies return to school and receive formal training from professional dog trainers, which takes anywhere from two to three months.⁴⁴ Upon completion, the dogs are paired with a visually impaired person, and the team works together on the GDB campus for another two to three weeks to make sure the team is compatible and will work well together.⁴⁵ Finally, the teams graduate and there is a ceremony to send them on their way.⁴⁶

Approximately one-third of the puppies whelped graduate from this long and arduous training and become guide dogs.⁴⁷ The puppies that do become guides learn how to perform valuable functions for the people they serve, including “[l]eading a person in a straight line from point A to point B; [s]topping for all changes in elevation, including curbs and stairs; [s]topping for overhead obstacles, such as tree limbs; [and a]voiding obstacles in their path.”⁴⁸ Additionally, the dogs are “trained in ‘intelligence disobedience,’” which means “if they are given an unsafe command, they are taught to not obey it (for example, refusing to step out into the street when there is oncoming traffic).”⁴⁹ The dogs are also trained to have “impeccable manners” and to ignore distractions like other animals, people, or food on the floor in restaurants.⁵⁰ All of this intensive training is balanced with the dog’s basic obedience to its human—after all, guide dogs “cannot determine the route to a new destination” or “read traffic signals.”⁵¹ All of this training is accomplished

43. *Puppy Raisers*, *supra* note 33.

44. See *Guide Dog Training*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=programs_dog_guide (last visited Mar. 5, 2012).

45. *Id.*

46. See *Photo Slideshow*, FLICKR, <http://www.flickr.com/photos/guidedogsfortheblind/sets/72157625150456462/> (last visited Mar. 6, 2012) (providing a photo slideshow of the Oregon class of graduates from September 11, 2010).

47. During the 2011 fiscal year GDB whelped 822 puppies and only 309 of those puppies graduated from the program. *Program Statistics*, GUIDE DOGS FOR THE BLIND, http://www.guidedogs.com/site/PageServer?pagename=about_stats_program (last visited Mar. 6, 2012). GDB breeds the dogs specifically to be guide dogs, and the breeder stock is also housed with volunteers. PUPPY RAISING MANUAL, GUIDE DOGS FOR THE BLIND, PUPPY RAISING DEP’T § 1-3 (2008). GDB “uses Labrador Retrievers, Golden Retrievers, and crosses between Labs and Golden Retrievers as guides.” *Id.*

48. *Guide Dog Training*, *supra* note 44.

49. *Id.*

50. *Id.*

51. *Id.* The training guide states that:

Guide Dogs take their cues and commands from their human partners; it’s up to the person to determine the routes they take and if it is safe to cross a street. Through repetition, they may remember a routine course, but it is the blind person’s job to know where they are at all times.

using food rewards, praise, verbal and leash collar cues, clicker training, and “physical and verbal affection, [that] builds motivation [and] confidence and produces a happy working Guide Dog.”⁵²

G. *Service Animals That Are Protected by Federal Law*

Seeing eye dogs are only one type of service animal protected by the promulgated regulations of the Americans with Disabilities Act (ADA). Regulations for Title II and Title III of the ADA define a 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.”⁵³ In other words, “[s]ervice animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself.”⁵⁴ The ADA does not require the service animal to be “licensed or certified by a state or local government.”⁵⁵ Service animals are, however, typically identified by a harness, a vest, or some other demarcation. This puts the public on notice that it is a service animal.

Besides guide dogs that solely work with persons who are visually impaired, and signal dogs that work with persons who are hearing impaired, service animals include, but are not limited to, seizure-alert or seizure-response animals, mobility-assistance animals, and service animals trained to detect and warn about certain maladaptive behaviors, for example, in a person with autism.⁵⁶ Therapy dogs and emotional-support animals may also provide a useful service to the people they assist, but are not service animals for purposes of the ADA.⁵⁷

52. *Id.*

53. 28 C.F.R. §§ 35.104, 36.104 (2011).

54. Civil Rights Div., *Commonly Asked Questions About Service Animals in Places of Business*, U.S. DEP'T OF JUST., <http://www.ada.gov/qasrvc.htm> (last visited Mar. 6, 2012).

55. *Id.* The Department of Justice website states that:

Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you [owner or manager in a place of business] are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability.

Id.

56. See *All Service Dogs*, 4 PAWS FOR ABILITY, <http://www.4pawsforability.org/alldogs.html> (last visited Mar. 6, 2012) (listing the variety of assistance dogs available for people with disabilities).

57. See Civil Rights Div., *Revised ADA Regulations Implementing Title II and Title III*, DEP'T OF JUST., <http://www.ada.gov/regs2010/ADAregs2010.htm> (last visited Mar. 6, 2012) (noting therapy dogs whose sole function is to provide emotional support and comfort are not recognized by the ADA as service dogs). A therapy dog:

[I]s a dog which has been specially trained to offer companionship, affection, and comfort. These special canines are brought into hospitals, nursing homes, mental facilities,

III. SURVEY OF RELEVANT FEDERAL AND STATE LAWS

Federal and state legislation and state case law protects individuals with disabilities and their service animals. However, no federal legislation protects service animals in training and their trainers. It is left to the individual states to regulate the protections of service dogs in training and their trainers, and some states have created statutes to address these concerns. The scope of the protection offered to service animals in training varies greatly among the states, and case law interpreting those protections is minimal.

A. Federal Legislation

The Americans with Disabilities Act (ADA), the Air Carrier Access Act (ACAA), and the Fair Housing Act Amendments (FHAA) provide protections for persons with disabilities to be accompanied by trained service animals.⁵⁸

1. The Americans with Disabilities Act (ADA)

The ADA was enacted in 1990 in order to “establish a clear and comprehensive prohibition of discrimination on the basis of disability,”⁵⁹ and contains few general provisions.⁶⁰ Employment is dealt with separately in Title I, public services are discussed in Title II, and discrimination in public accommodations and services operated by private entities are detailed in Title III.⁶¹

While the term “service animal” does not appear in the text of the ADA, the newly promulgated ADA Title II and Title III regulations define “service animal” as:

[A]ny 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

prisons, schools, and disaster areas to provide their unique services to people who might be in need of a friendly face and a connection with an animal.

What Is a Therapy Dog?, WISE GEEK, <http://www.wisegeek.com/what-is-a-therapy-dog.htm> (last visited Mar. 6, 2012). An emotional support animal assists people with mental or emotional disabilities. *Emotional Support Animals*, SERV. DOG CENT., <http://www.service-dogcentral.org/content/ESA> (last visited Mar. 6, 2012). Consequently, therapy dogs in training and emotional support animals in training are not included in the protections this Note is seeking for service animals in training.

58. See generally 42 U.S.C. §§ 12101, 3604 (2006) (describing the ADA and the FHAA); 49 U.S.C. § 41705(a) (2006) (describing the ACAA).

59. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, 327.

60. See generally 42 U.S.C. §§ 12111, 12131, 12181 (2006) (listing only several provisions).

61. *Id.* §§ 12111, 12131, 12181.

vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.⁶²

The ADA and the accompanying regulations do not explicitly protect service animals in training. This omission is discussed in a 1997 Department of Justice opinion stating: “Title III of the ADA does not require public accommodations to permit the use of service animals by service animal trainers. Therefore, a public accommodation that bars such trainers from entering with a service animal in training does not violate Title III.”⁶³

As to service animals, Title I of the ADA requires an employer to provide reasonable accommodations for persons with disabilities who depend on service animals.⁶⁴ Title II and Title III of the ADA require public entities and places of public accommodations that are operated by private entities to modify their policies and procedures in order to accommodate persons with disabilities who are accompanied by service animals.⁶⁵

2. The Air Carrier Access Act (ACAA)

The ADA explicitly does not apply to transportation by aircraft, leaving such regulation to the ACAA.⁶⁶ Like the ADA, the ACAA includes

62. 28 C.F.R. § 35.104 (2011) (emphasis added). The language of these regulations is controversial in that it only includes dogs and miniature horses in the definition of service animal; however, this issue is beyond the scope of this Note.

63. Letter, *supra* note 1.

64. 42 U.S.C. § 12111(9) (“reasonable accommodation” defined); *see* 42 U.S.C. § 12112(a) (providing the general rule regarding discrimination); *McDonald v. Dep’t of Env’tl. Quality*, 214 P.3d 749 (Mont. 2009) (finding sufficient evidence to prove that employee “needed” nonskid floors in order to accommodate her service animal, and as a result her request for nonskid floors was reasonable).

65. *See* 42 U.S.C. § 12131(1) (defining “public entity”); 42 U.S.C. § 12132 (defining “discrimination”); 42 U.S.C. §§ 12181(7)(A)–(L) (defining “public accommodation”); 42 U.S.C. § 12182(a) (providing the general rule on the prohibition of discrimination by public accommodations).

66. 42 U.S.C. § 12131 (2006); *see* 14 C.F.R. § 382.117(f) (2010) (enumerating certain animals that are and are not required to be allowed in aircraft cabins). The regulations implemented by USDOT under the authority of the ADA specifically lists examples of certain animals that the airlines are not required to make accommodations for in the cabin, for example: “snakes, other reptiles, ferrets, rodents, and spiders.” 14 C.F.R. § 382.117(f). Other animals, like “miniature horses, pigs, [and] monkeys,” may or may not be precluded from traveling in the cabin based on a number of factors, for example:

[W]hether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, [and] whether it would cause a significant disruption of cabin service, whether it would be prohibited from entering a foreign country that is the flight’s destination.

an explicit statutory ban on disability discrimination,⁶⁷ and explanatory regulations directly mention service animals.⁶⁸ Specifically, the ACAA regulations require airlines to allow service animals on planes requiring that “[a]s a carrier, you must permit a service animal to accompany a passenger with a disability.”⁶⁹ There are somewhat different ACAA rules for passengers who want to fly with an emotional support or psychiatric service animal with them in the cabin of the plane.⁷⁰

In May of 2003 the U.S. Department of Transportation (DOT) published a revision notice concerning their existing *Guidance Concerning Service Animals in Air Transportation*.⁷¹ The notice explains that the ACAA’s protections for service animals do not extend to service animals in training, stating: “[w]hen a service animal is *not accompanying a passenger with a disability*, the airline’s general policies on the carriage of

Id. See generally 49 U.S.C. § 41705 (2006) (stating that air carriers may not discriminate against a person who has or is perceived to have a disability).

67. 49 U.S.C. § 41705(a).

In providing air transportation, an air carrier, including (subject to section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds: (1) *the individual has a physical or mental impairment* that substantially limits one or more major life activities. (2) the individual has a record of such an impairment. (3) the individual is regarded as having such an impairment.

Id. (emphasis added). In addition see 14 C.F.R. § 382.1 that states:

The purpose of this part is to ensure that handicapped persons receive adequate air transportation service, without unjust discrimination based on handicap, and to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. The part established regulations to prohibit discrimination in air transportation against qualified handicapped persons, and to ensure: (a) That handicapped persons receive reasonable access to commercial air transportation, (b) That certain specific practices are prohibited, and (c) That certain specific changes in service are made. The part is designed to ensure that transportation of handicapped persons is integrated into the overall air transportation system.

14 C.F.R. § 382.1 (1990).

68. 14 C.F.R. § 382.117(a) (2010).

69. *Id.* (emphasis added).

70. *Id.* § 382.117(e). Specifically, “[i]f a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, you are not required to accept the animal for transportation in the cabin unless the passenger provides you current documentation . . . on the letterhead of a licensed mental health professional” that confirms the “passenger has a mental or emotional disability . . . needs emotional support or psychiatric service . . . [and] the individual providing the assessment is a licensed mental health professional.” *Id.*

71. *Guidance Concerning Service Animals in Air Transportation*, 68 Fed. Reg. 24,874 (May 9, 2003) (to be codified at 14 C.F.R. pt. 382).

animals usually apply.”⁷² Nevertheless, “airline policies regarding service animals in training vary. Some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes.”⁷³

ACAA regulations and related DOT policy guidance actually underscore the importance of aircraft access to service animals in training. It is essential, early on in training, to see how a prospective service animal will act aboard aircraft. Of all places of socialization, an airplane is one of the most important due to the changes in pressure, confined space, large number of people and loud noises, all of which could frighten a service animal or a service animal in training. Service animals that cannot be trained for aircraft cannot be effective. It seems obvious that such training should not be left to the person with a disability, who is dependent on the animal’s assistance aboard the plane.

3. The Fair Housing Act Amendments (FHAA)

The FHAA generally prohibits “discrimination in the sale or rental of housing” on the basis of being handicapped.⁷⁴ One form of housing discrimination made illegal by the FHAA is “a refusal to make *reasonable accommodations* in rules, *policies*, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”⁷⁵

72. *Id.* at 25,876 (emphasis added) (“Airline personnel should know their company’s policies on pets, service animals in training, and the carriage of animals generally.”). The policy for service animals in air transportation states:

[T]o aid airline employees and people with disabilities in understanding and applying the ACAA and the provisions of Part 382 with respect to service animals in determining: (1) Whether an animal is a service animal and its user a qualified individual with a disability; (2) How to accommodate a qualified person with a disability with a service animal in the aircraft cabin; and (3) When a service animal legally can be refused carriage in the cabin.

Id. at 24,875.

73. *Id.* at 24,876.

74. See 42 U.S.C. § 3604 (2006) (providing several prohibited bases for discriminating). The text of the statute states:

(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—(A) that buyer or renter, (B) a person residing or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter. (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—(A) that person; or (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that person.

Id. § 3604(f)(1)-(2).

75. *Id.* § 3604(f)(3)(B) (emphasis added).

FHAA regulations provide an example of reasonable accommodations involving service animals:

A blind applicant for rental housing wants [to] live in a dwelling unit with a seeing eye dog. The building has a *no pets* policy. It is a violation of §100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.⁷⁶

As with the ADA and the ACAA, nothing in the text of the FHAA or its regulations explicitly protects service animals in training.

In sum, while federal law recognizes the need for some persons with disabilities to have their service animals with them at work, at home, in places of public accommodation, and public places, no federal law entitles service animals in training access to any of those places.

B. State Statutes

Many states have enacted legislation granting rights and privileges to service animals in training. The scope of legislation varies significantly from state to state specifically in reference to the public places covered by the protections and the individuals whom the legislation protects.⁷⁷ A

76. 24 C.F.R. § 100.204(b) (1997) (emphasis in original); *see, e.g.*, *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (“[D]eaf individual’s need for accommodation afforded by a hearing dog is . . . *per se* reasonable within the meaning of the [Fair Housing Amendments Act].”); *Prindable v. Assoc. of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1257 (D. Haw. 2003) (waiving a no pets policy is a reasonable accommodation).

77. *See* ALA. CODE § 3-1-7 (LexisNexis 1997) (“No owner, lessee, proprietor, manager, superintendent, agent or employee of any place of *public accommodation, amusement or recreation, including, but not limited to, any inn, hotel, restaurant, eating establishment, barbershop, billiard parlor, store, public conveyance, theater, motion-picture house, public educational institution or elevator* shall refuse to permit a dog guide Any person who violates this section shall be guilty of a misdemeanor and, upon conviction shall be fined an amount not to exceed \$50.00.”) (emphasis added); ALASKA STAT. § 11.76.133 (2008) (“[P]ublic facility[.]” which “means a capital improvement owned, operated, or occupied by, or a mode of transportation owned or operated by, the state, a public corporation of the state, the University of Alaska, a political subdivision of the state, or a regional educational attendance area.”); ARIZ. REV. STAT. § 11-1024(A)–(C), (E), (J)(4)–(5) (LexisNexis 2001) ([A]ny office or place of business or recreation to which the general public is invited, whether operated by a public or private entity and includes all forms of conveyance, including taxis, tow trucks and ambulances.”). Some states like Arkansas have a very detailed statute:

Any street or highway; [a]ny sidewalk or walkway; [a]ny common carrier, airplane, motor vehicle, railroad train, bus, streetcar, boat, or any other public conveyance or mode of transportation; [a]ny hotel, motel, or other place of lodging; [a]ny public building maintained by any unit or subdivision of government; [a]ny building to which the general public is invited; [a]ny educational facility or college dormitory; [a]ny res-

taurant or other place where food is offered for sale to the public; or [a]ny other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited within the State of Arkansas.

ARK. CODE ANN. § 20-14-308 (2005). California's code also is quite detailed and states:

[F]ull and equal access . . . to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons" as well as "housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

CAL. CIV. CODE § 54.1(a)(1), (b)(1) (West 2007); COLO. REV. STAT. § 24-34-803(2) (2010) ("Public streets, highways, walkways, public buildings, public facilities and services, and other public places; and [a]ny place of public accommodation or on public transportation services."); CONN. GEN. STAT. ANN. § 46a-64(a)(5) (West 2009) ("[F]ull and equal access to any place of public accommodation, resort or amusement."). The District of Columbia, like Connecticut refers to amusement.

[F]ull and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation in the District of Columbia, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited.

D.C. CODE ANN. § 7-1002(a) (2004); FLA. STAT. ANN. § 413.08(2) (West 2009) ("[F]ull and equal accommodations, advantages, facilities, and privileges in all public accommodations"). Georgia makes their definition subjective:

[F]ull and equal accommodations, advantages, facilities, and privileges on all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation and at hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

GA. CODE ANN. § 30-4-2(a), (b)(1) (2007); IDAHO CODE ANN. § 18-5812B(1) (2004) ("A person shall not be denied the use of any common carrier or public transportation facility or admittance to any hotel, motel, cafe, elevator, or any other public place within the state of Idaho by reason of being accompanied by a dog-in-training."); 720 ILL. COMP. STAT. ANN. 630/1 (West 2004) ("[R]ight of entry and use of facilities of any public place of accommodation."); IND. CODE ANN. § 16-32-3-2(d) (West 1994) (referring to places of public accommodation). Iowa's law reads as follows:

[F]ull and free use of the streets, highways, sidewalks, walkways, public buildings, public elevators, public facilities, and other public places" and "full and equal accommodations, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, other public conveyances or modes of transportation, hotels, lodging places, eating places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject

only to the conditions and limitations established by law and applicable alike to all persons.

IOWA CODE ANN. §§ 16C.3, 216C.4 (West 2009); KY. REV. STAT. ANN. § 258.500 (2)–(3), (5), (6) (West 2005) (“[H]otel, motel, restaurant, or eating establishment . . . full and equal accommodations, facilities, and privileges of all public places of amusement, theater, or resort . . . full and equal accommodations on all public transportation, if the dog does not occupy a seat in any public conveyance, nor endanger the public safety,” as well as “public buildings and public elevators,” and an individual with an assistance dog “may keep the dog in his immediate custody while a tenant in any apartment, or building used as a public lodging”); LA. REV. STAT. ANN. § 21.52 (1999) (“[F]ull and equal accommodations, advantages, facilities, and privileges of all public accommodation, amusement or resort, and other places to which the general public is invited.”); MD. CODE ANN., HUM. SERVS. § 7-705(c) (West 2007) (“[A] service animal trainer may be accompanied by an animal that is being trained as a service animal in any place where a blind, visually impaired, deaf, hard of hearing, or mobility impaired individual has the right to be accompanied by a service animal” unless “admitting the animal would create a clear danger of a disturbance or physical harm to an individual in the place.”). These places include: public places, public accommodations and conveyances, and housing accommodations. *Id.* See also MASS. GEN. LAWS ANN. ch. 129 § 39(F) (West 2003) (“A person accompanied by and engaged in the raising or training of a service dog . . . shall have the same rights, privileges and responsibilities as those afforded to an individual with a disability under the Americans with Disabilities Act”); MICH. COMP. LAWS ANN. § 750.502(c) (West 2004) (“[P]lace of public or private housing, accommodation, amusement, or recreation, including but not limited to any inn, hotel, motel, apartment building, trailer park, restaurant, barbershop, billiard parlor, store, public conveyance on land or water, theater, motion picture house, public or private educational institution, or elevator.”); MINN. STAT. ANN. § 256C.02 (West 2007) (“[F]ull and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places; and are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, boats, or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.”); MO. ANN. STAT. § 209.150(1)–(2) (West 2000) (“[F]ull and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places,” and “all common carriers, airplanes, motor vehicles, railroad trains, motor buses, taxis, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.”); NEB. REV. STAT. § 20-127 (2007) (“[F]ull and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.”); NEV. REV. STAT. § 04.145(1) (2009) (“[C]ommon carrier or other means of public conveyance and transportation.”); N.H. REV. STAT. ANN. § 167-D:4 (LexisNexis 2011) (“[A]ny public facility, housing accommodation, or place of public accommodation to which the general public is invited.”); N.J. STAT. ANN. § 10:5-29.3 (West 2002) (explaining that the trainer and service dog in training have access to all public facilities); N.Y. CIV. RIGHTS LAW §§ 47, 47-b(3) (Consol. 2001) (explaining

that the trainer and service dog in training have access to the same facilities as a person with a disability); N.C. GEN. STAT. § 168-3 (2011) (“[A]ccommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation; hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.”); N.D. CENT. CODE § 25-13-02.1(1) (2002) (“[A]ny place of public accommodation, common carrier, facility of health care provider, and any place to which the public is generally invited . . . provided: (a) The trainer notifies an onsite manager that an assistance dog in training is being brought onto the premises; (b) The trainer wears a photo identification card issued by a nationally recognized dog training program”). Ohio’s law specifically mentions dogs:

[F]ull and equal accommodations, advantages, facilities, and privileges of all public conveyances, hotels, lodging places, all places of public accommodation, amusement, or resort, all institutions of education, and other places to which the general public is invited, and may take the dog into such conveyances and places, subject only to the conditions and limitations applicable to all persons not so accompanied,” and “[a]ny dog in training to become a guide, leader, listener, or support dog shall be covered by a liability insurance policy provided by the nonprofit special agency engaged in such work protecting members of the public against personal injury or property damage caused by the dog.

OHIO REV. CODE ANN. § 955.43(A) (LexisNexis 2004); OKLA. STAT. ANN. tit. 7, § 19.1(B) (West 2009) (“Any street, highway, sidewalk, walkway, any common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or any other public conveyance or mode of transportation, hotel, motel, or other place of lodging, public building maintained by any unit or subdivision of government, building to which the general public is invited, college dormitory and other educational facility, restaurant or other place where food is offered for sale to the public, or any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited within the State of Oklahoma.”); OR. REV. STAT. § 346.620 (2011) (including places of public accommodation and or “any mode of transportation” as defined by statute); 18 PA. CONS. STAT. ANN. § 7325 (West 2000) (“[A]ny accommodation, advantage, facility or privilege of such theatre, hotel, restaurant or other place of public entertainment or amusement.”); S.C. CODE ANN. § 43-33-20(c) (1985) (“Every handicapped person has the right to be accompanied by an assistance dog, especially trained for the purpose, in any of the places [where the general public is invited] without being required to pay an extra charge Each handicapped person is liable for any damage done to the premises or facilities by the dog.”); TENN. CODE ANN. § 62-7-112(a)(1)(A) (2009) (A dog guide shall be allowed in “any place of public accommodation, amusement or recreation, including, but not limited to, any inn, hotel, restaurant, eating house, barber shop, billiard parlor, store, public conveyance on land or water, theater, motion picture house, public educational institution or elevator”); TEX. HUM. RES. § 121.003(i) (2001) (“An assistance animal in training shall not be denied admittance to any public facility”); UTAH CODE ANN. § 62A-5b-104(1)(a) (LexisNexis 2011) (“A person with a disability has the right to be accompanied by a service animal”); VT. STAT. ANN. tit. 9, § 4502(b) (2006) (“An owner or operator of a place of public accommodation . . . shall not prohibit from entering a place of public accommodation: (1) An individual with a disability accompanied by a service animal.”); VA. CODE ANN. §§ 51.5-44(B), (E) (2005) (As long as the dog in training is at least six months old and accompanied by an experienced trainer, it is entitled to “full and equal accommodations,

number of states have no legislation regarding service animals in training.⁷⁸

In determining who qualifies to be accompanied by service animals in training, state laws vary. Some states will allow *any person* to train a service animal.⁷⁹ Other states require the person to be a *dog trainer* or

advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, subways, boats or any other public conveyances or modes of transportation, restaurants, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited subject only to the conditions and limitations established by law and applicable alike to all persons.”); W. VA. CODE ANN. § 5-15-4(b)-(c) (LexisNexis 2011) (“Every person . . . with a disability shall have the right to be accompanied by a service animal in any of the places . . . to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.”); WIS. STAT. ANN. § 106.52(1m)(a) (2002) (“[F]ull and equal enjoyment of any public place of accommodation or amusement to a person with a disability or to a service animal trainer”); WYO. STAT. ANN. §§ 35-13-201(b), 204(a) (2011) (“Any . . . person with a disability may be accompanied by a service dog in any [public facility].” “Any . . . person with a disability who is a passenger on any common carrier, airplane, motor vehicle, railroad train, motor bus, boat or any other public conveyance operating within the state may have with him a service dog.”).

78. The following state statutes do not give service animals in training the rights and privileges granted to fully trained service animals. *E.g.*, DEL. CODE ANN. tit. 31, § 2117(a) (Supp. 2009) (stating that a “seeing-eye dog” may only assist a person if the dog is fully educated by “a recognized training agency or school”); HAW. REV. STAT. § 347-13 (2006) (requiring that a dog be trained for a specific purpose); KAN. STAT. ANN. §§ 39-1102, 39-1107 (2000) (requiring that the dog be specially trained and tested); ME. REV. STAT. ANN. tit. 17, § 1312, tit. 5, § 4553 9-E(B) (2006) (applying only to dogs that are individually trained); MISS. CODE ANN. § 43-6-7 (West 2006) (requiring the dog to be specially trained); MONT. CODE ANN. §§ 49-4-214 (1),(4) (2011) (allowing a person with a disability to be accompanied by a service animal or service animal in training, but requiring service animals in training to wear specific identification); N.M. STAT. ANN. § 28-7-3 (2006) (requiring a service dog be specially trained for the purpose); R.I. GEN. LAWS § 39-2-13 (2006) (requiring training by a recognized training agency or school); S.D. CODIFIED LAWS § 20-13-23.2 (2006) (requiring a service animal to be “especially trained for the purpose”).

79. *E.g.*, CONN. GEN. STAT. ANN. § 46A-64(a)(5) (West 2011) (“*any person* training a dog as a guide dog for a blind person or a dog to assist a deaf or mobility impaired person”); IDAHO CODE ANN. § 18-5812B(1) (2011) (“*A person* shall not be denied the use of any common carrier or public transportation facility or admittance to any hotel, motel, cafe, elevator, or any other public place within the state of Idaho by reason of being accompanied by a dog-in-training.”); IOWA CODE § 216C.1 (2011) (“*a person training a service dog or assistive animal*”); MASS. ANN. LAWS ch. 129, § 39F (LexisNexis 2003) (“*A person . . . engaged in the raising or training of a service dog*”); NEV. REV. STAT. § 704.145(1)(b) (2009) (“*a person* who is training a service animal”); N.C. GEN. STAT. § 168-4.2(b) (2011) (“*a person* who is training a service animal”); OR. REV. STAT. § 346.610(6) (2011) (“‘Trainer’ means *a person* who trains dogs to lead or guide persons who are blind.”); S.C. CODE ANN. § 43-33-20(d) (1985) (“*Every person* who is a trainer of an assistance or guide dog, while engaged in the training of an assistance or guide dog”); UTAH CODE ANN. § 62A-5b-104(2) (LexisNexis 2011) (“*A person* who is not a

authorized by an organization that trains service animals.⁸⁰ Yet still other states require the person to be *employed* by an agency that trains service animals.⁸¹ Finally, some legislative actions require the person to have

person with a disability has the right to be accompanied by an animal that is in training to become a service animal”); VT. STAT. ANN. tit. 9, § 4502(b)(2) (2006) (“*An individual who is training an animal to perform as a service animal for an individual with a disability*”).

80. *E.g.*, ALASKA STAT. § 11.76.133(d)(1) (“In this section . . . ‘authorized’ means *employed by, or serving as a volunteer with*, a school, agency, or other facility that trains service animals”); ARIZ. REV. STAT. ANN. § 11-1024(E) (“*Any trainer or individual with a disability may take an animal being trained as a service animal to a public place for purposes of training it to the same extent as provided in subsections, A, B and C of this section.*” Trainer is not defined by statute.); ARK. CODE ANN. § 20-14-308 (a), (b) (“[A] dog trainer in the act of training a guide, signal, or service dog,” and dog trainer is not defined by statute); CAL. CIV. CODE § 54.1(c) (“*persons authorized to train service dogs for individuals with a disability*”); COLO. REV. STAT. § 24-34-803(7)(g) (2011) (“Trainer of an assistance dog’ means a person who is qualified to train dogs to serve as assistance dogs.”); FLA. STAT. ANN. § 413.08(8) (West 2009) (“*Any trainer of a service animal, while engaged in the training of such an animal, has the same rights and privileges with respect to access to public facilities*”); 720 ILL. COMP. STAT. ANN. 630/1 (LexisNexis 2011) (“[A] *trainer of a guide, leader, seizure-alert, or seizure-response dog is accompanied by a guide, leader, seizure-alert, or seizure response doge or a dog that is being trained to be a guide*”); IND. CODE ANN. § 16-32-3-2(d) (LexisNexis 2011) (“*A service animal trainer, while engaged in the training process of a service animal*”); MD. CODE ANN., HUM. SVCS. § 7-705(a)(4) (LexisNexis 2011) (“[A] *service animal trainer* who is accompanied by an animal that is being trained as a service animal.”); MICH. COMP. LAWS ANN. § 750.502c(2) (LexisNexis 2003) (“[A] *trainer of guide or leader dogs*”); MO. ANN. STAT. § 209.152 (West 2010) (“*Any trainer, from a recognized training center*”); NEB. REV. STAT. § 20-127(3) (2007) (“[A] *bona fide trainer of a [service animal]*,” which is not defined by statute); N.J. STAT. ANN. § 10:5-29.3 (West 2002) (“[A] *service or guide dog trainer*,” which is not defined by statute); OHIO REV. CODE ANN. § 955.43(A) (LexisNexis Supp. 2011) (“[A] *trainer of an assistance dog*,” which is not defined by statute); OKLA. STAT. tit. 7, § 19.1(B) (West 2009) (“[A] *dog trainer from a recognized training center in the act of training guide, signal, or service dogs*”); TEX. HUM. RES. CODE ANN. § 121.003(i) (West 2001) (“[A]n *approved trainer* who is an agent of an organization generally recognized by agencies involved in the rehabilitation of persons who are disabled”); VA. CODE ANN. § 51.5-44(E) (Supp. 2008) (“[S]uch person is an experienced *trainer* of guide dogs or is conducting continuing training of a guide dog”); W. VA. CODE ANN. § 5-15-4(d) (LexisNexis 2011) (“[A]ny person who is *certified as a trainer* of a service animal”); WIS. STAT. ANN. § 106.52(3) (West Supp. 2011) (explaining the rights of a “*service animal trainer*” when escorted by a service animal).

81. *E.g.*, ALASKA STAT. § 3.1.7 (“[P]rovided, that such dog guide is wearing a harness . . . [and] that such blind person shall present for inspection credentials issued by an accredited school for training dog guides. Any person who violates this section shall be guilty of a misdemeanor and, upon conviction shall be fined an amount not to exceed \$50.00.”); N.H. REV. STAT. ANN. § 167-D:1 (“Any person who is *employed* by an organization generally recognized by agencies”).

“available for inspection credentials from the accredited school for which the dog is being trained.”⁸²

1. Overview of State Legislation Regarding Service Animals in Training

Most of the state statutes grant service animals in training access to places of public accommodation. However, public accommodations are not uniformly defined by the states.⁸³ Some state laws afford service animals in training all of the protections given to fully trained service animals including access to educational institutions, housing facilities, airplanes, and medical facilities. Other state laws provide service animals in training with only access to places of public accommodations or public facilities.

Most states do not explicitly require access to educational facilities for service animals in training. Alabama, Tennessee, and Virginia permit service animals in training in public educational institutions.⁸⁴ Similarly, Alaska allows the service animals in training access to public facilities,⁸⁵ and Arkansas and Oklahoma have broadened the right of service animals to access “[a]ny educational facility or college dormitory.”⁸⁶ California explicitly includes “private schools” as a place where service animals in

82. *E.g.*, GA. CODE ANN. § 30-4-2(b)(3)(B) (“Such person has . . . credentials from the accredited school for which the dog is being raised”); LA. REV. STAT. ANN. § 21.52(A), (C) (“[A]ny person who is qualified to provide training for a guide dog or service animal” and “shall furnish evidence of his qualifications to provide training for a guide dog”); N.D. CENT. CODE § 25-13-02.1(1) (“A trainer with a service animal in training may enter . . . provided: . . . b. The trainer wears a photo identification card issued by a nationally recognized dog training program”); TENN. CODE ANN. § 62-7-112(a)(1)(B)(i)-(ii) (“dog guide trainer” and “shall have available for inspection credentials from the accredited school for which the dog is being raised”); KY. REV. STAT. ANN. § 258.500(1), (8) (“trainer of an assistance dog,” and “[a]ll trainers . . . shall have in their personal possession identification verifying that they are trainers of assistance dogs.”).

83. S.C. CODE ANN. § 43-33-20(b) (1985) (explaining that in regards to “public accommodations” in South Carolina, “[t]he blind, the visually handicapped, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons”).

84. ALA. CODE § 3-1-7 (LexisNexis 1996); TENN. CODE ANN. § 62-7-112(a)(1)(B) (2009); VA. CODE ANN. § 51.5-44(B), (E) (Supp. 2008).

85. ALASKA STAT. § 11.76.133 (2010). A public facility is defined by statute and includes the University of Alaska and “a regional educational attendance area.” *Id.*

86. ARK. CODE ANN. § 20-14-308 (2005); *see* OKLA. STAT. tit. 7, § 19.1(B) (West 2009) (including “building[s] to which the general public [are] invited, college dormitor[ies] and other educational facility[ies]”).

training are allowed “full and equal access.”⁸⁷ Additionally, Michigan includes “public or private educational institution[s],”⁸⁸ and Ohio provides access for service animals in training in “all institutions of education.”⁸⁹

Only a minority of states provide the same right of access for service animals in training and already trained service animals in housing facilities. For example, in California service animals in training are “entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation.”⁹⁰ Kentucky and Maryland give service animals in training rights in housing accommodations.⁹¹ Michigan, Utah, and Wyoming expand these rights to public and private housing accommodations.⁹² At least thirteen states purport to permit the service animals in training to access airplanes,⁹³

87. CAL. CIV. CODE § 54.1(b)(1), (c) (Deering 2005).

88. MICH. COMP. LAWS SERV. § 750.502(c) (LexisNexis 2003).

89. OHIO REV. CODE ANN. § 955.43(A) (LexisNexis 2004).

90. CAL. CIV. CODE §§ 54.1(c), (b)(1) (Deering 2005).

91. *See, e.g.*, KY. REV. STAT. ANN. § 258.800 (LexisNexis 2005) (providing that dogs in training have certain accommodations regarding housing); MD. CODE ANN., HUM. SERVS. §§ 7-705(c), 7-704 (LexisNexis 2007) (indicating that dogs in training may accompany a trainer in areas where a disabled person would already have a right to have a service animal).

92. MICH. COMP. LAWS SERV. § 750.502(c) (LexisNexis 2003); UTAH CODE ANN. §§ 62-A-5b-104(2), 103 (LexisNexis 2011); WYO. STAT. ANN. §§ 35-13-205(a)(i), 201 (2011).

93. *See* ARK. CODE ANN. § 20-14-308 (2005) (“[A] dog trainer in the act of training a guide, signal, or service dog shall not be denied admittance to or refused access to . . . Any common carrier, airplane, motor vehicle, railroad train, bus, streetcar, boat, or any other public conveyance or mode of transportation.”); CAL. CIV. CODE § 54.1(c) (Deering 2005) (“[P]ersons authorized to train signal dogs for individuals who are deaf or hearing impaired, and other individuals with a disability . . . may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified . . .”); D.C. CODE ANN. § 7-1002(a), (c) (LexisNexis 2001) (“Every service animal trainer who is training an animal to be a service animal shall have the same access and liability conferred upon a person who is blind or deaf . . .”); GA. CODE ANN. § 30-4-2(a), (b)(2) (2007) (giving persons training dogs for guide or service purposes “the same right to be accompanied by such dog being trained as the totally or partially blind person, deaf person, or physically disabled person . . .”); IOWA CODE §§ 216C.3, 216C.4, 216C.11 (2010) (identifying that these regulations cover both those with a disability requiring the assistance of a service dog and those training a service dog); MO. ANN. STAT. §§ 209.150, 209.152 (West 2010) (identifying airplanes as a means of transportation in which service dogs are permitted and including permission for individuals training service animals to bring their animals on board); NEB. REV. STAT. § 20-127 (2007) (permitting a “trainer of a dog guide, hearing guide, or service dog” to accompany the dog onto an airplane); N.C. GEN. STAT. §§ 168-3, 168-4.2 (2011) (adding clear requirements that the service animal in training be identified as such, but when meeting this requirement is permitted access to public transport in all fashions similar to functional service dogs); OKLA. STAT. tit. 7, § 19.1(B) (West 2009) (accommodating both handicapped and trainers within the group of persons permitted to have service animals accompany them and specifically identifies aircraft as one of the modes of public

even though airplane regulations are governed by the federal ACAA.⁹⁴

The definition of “public place” also varies from state to state. Unlike other statutorily defined public places, Arizona allows the service animals in training to access “public places,” a phrase which includes “taxis, tow trucks and ambulances.”⁹⁵ California includes “hospitals, clinics, and physicians’ offices . . . [and] adoption agencies,”⁹⁶ while North Dakota includes “facilit[ies] of health care provider[s].”⁹⁷ Uniquely, West Virginia adds “places of employment.”⁹⁸ Alaska limits accessibility of service animals in training to public facilities, which includes state owned property or government buildings.⁹⁹ North Dakota requires “[t]he trainer to wear a photo identification card issued by a nationally recognized service animal training program.”¹⁰⁰ Finally, Virginia distinctively requires the dog in training to be at least six months old before it can accompany its trainer into places of public accommodations.¹⁰¹

conveyance included as permitting service animals); S.C. CODE ANN. § 43-33-20(b), (d) (1985) (“Every person who is a trainer of an assistance or guide dog, while engaged in the training of an assistance or guide dog, has the same rights and privileges with respect to access to public facilities and accommodations as blind and disabled persons, including the right to be accompanied by an assistance or guide dog or assistance or guide dog in training”); UTAH CODE ANN. §§ 62A-5b-103, 104(2) (LexisNexis 2011) (identifying “air carriers” as a means of public conveyance; this regulation goes on to stipulate that “[a] person who is not a person with a disability has the right to be accompanied by an animal that is in training to become a service animal); VA. CODE ANN. § 51.5-44(B), (E) (2005) (determining airplanes to be a specific mode of travel in which service animals may travel upon). The Virginia regulation ensures clarity for trainers and training dogs in that “this section shall apply to persons accompanied by a dog that is in training at least six months of age, and is (i) in harness, provided such person is an experienced trainer of guide dogs; (ii) on a blaze orange leash, provided such person is an experienced trainer of hearing dogs; (iii) in a harness or backpack, provided such person is an experienced trainer of service dogs; or (iv) wearing a jacket identifying the recognized guide, hearing or service dog organization, provided such person is an experienced trainer of the organization identified on the jacket.” *Id.*; W. VA. CODE ANN. §§ 5-15-4(b)–(d) (LexisNexis 2011) (including airplanes as a mode of transport which service dogs will be permitted upon). The West Virginia statutes states that “[t]he rights, privileges and responsibilities provided by this section also apply to any person who is certified as a trainer of a service animal while he or she is engaged in the training.” *Id.*

94. *Supra* Part III.A.2.

95. ARIZ. REV. STAT. ANN. §§ 11-1024(A), (B), (C), (E), (J)(4)–(5) (LexisNexis 2011).

96. CAL. CIV. CODE § 54.1(a)(1) (Deering 2005).

97. N.D. CENT. CODE § 25-13-02.1(1)(b) (2002).

98. W. VA. CODE ANN. §§ 5-15-4(b)–(d) (LexisNexis 2011); Clark Cnty. Sch. Dist. v. Buchanan, 924 P.2d 716, 720 (Nev. 1996) (upholding an injunction not permitting a teacher from bringing her service in training dog into her classroom).

99. ALASKA STAT. § 11.76.133 (2010).

100. N.D. CENT. CODE § 25-13-02.1(1)(b) (2002).

101. VA. CODE ANN. §§ 51.5-44(B), (E) (2005); *see infra* note 104.

2. Sample State Statutes

Several state statutes offer examples of extensive protection for service animals in training. Like the federal laws discussed earlier, other states extend rights and privileges to fully trained service animals, but not to service animals in training.¹⁰²

a. Kentucky

Kentucky's statute gives assistance to animals in training that are similar to rights and privileges given to fully trained service animals:

- (1) As used in subsections (1) to (11) of this section, "person" means a "person with a disability" as defined by KRS 210.770. "Person" also includes a trainer of an assistance dog.
- (2) If a person is accompanied by an assistance dog, neither the person nor the dog shall be denied admittance to any hotel, motel, restaurant, or eating establishment, nor shall the person be denied full and equal accommodations, facilities, and privileges, of all public places of amusement, theater, or resort when accompanied by an assistance.
- (3) Any person accompanied by an assistance dog shall be entitled to full and equal accommodations on all public transportation, if the dog does not occupy a seat in any public conveyance, nor endanger the public safety.
- (4) No person shall be required to pay additional charges or fare for the transportation of any accompanying assistance dog.
- (5) No person accompanied by an assistance dog shall be denied admittance and use of any public building, nor denied the use of any elevator operated for public use.
- (6) Any person accompanied by an assistance dog may keep the dog in his immediate custody while a tenant in any apartment, or building used as a public lodging.
- (7) All trainers accompanied by an assistance dog shall have in their personal possession identification verifying that they are trainers of assistance dogs.
- (8) The provisions of this section shall not apply unless the person complies with the legal limitations applicable to nondisabled persons unless all requirements of KRS 258.015 and 258.135 have been complied with.
- (9) Assistance dogs are exempt from all state and local licensing fees.

102. *E.g.*, WASH. REV. CODE ANN. § 70.84.021 (2011) (defining service dog as a trained dog).

(10) Licensing authorities shall accept that the dog for which the license is sought is an assistance dog if the person requesting the license is a person with a disability or the trainer of the dog.

(11) Emergency medical treatment shall not be denied to an assistance dog assigned to a person regardless of the person's ability to pay prior to treatment.

(12) No person shall willfully or maliciously interfere with an assistance dog or the dog's user.¹⁰³

Although the Kentucky statute does not include all of the possible rights and privileges for service animals in training as is afforded service animals generally, it does offer a more comprehensive approach than most states.

b. New Jersey

New Jersey takes a simpler and less enumerative approach to granting rights and privileges for service animals in training.¹⁰⁴ Its statute states:

A service or guide dog trainer, while engaged in the actual training process and activities of service dogs or guide dogs, shall have the same rights and privileges with respect to access to public facilities, and the same responsibilities as are applicable to a person with a disability.¹⁰⁵

103. KY. REV. STAT. ANN. § 258.500 (LexisNexis 2005). The statutory sections mentioned in § 258.500(8) are about general animal control and protection. *Id.* § 258.500(8). Compare KY. REV. STAT. ANN. § 258.015 (LexisNexis 2005) (discussing vaccination and certificate requirements for dogs, cats, and ferrets that live in-state), with KY. REV. STAT. ANN. § 258.135 (LexisNexis 2005) (excluding dog, cats, and ferrets from out-of-state from revaccination).

104. N.J. STAT. ANN. § 10:5-29.3 (West 2002). The New Jersey legislature proposed an amendment to this statute in December of 2009, 2008 NJ S.B. 3143 (NS). Even though the bill did not pass, the amendment suggested several changes, however even with the proposed changes the statute would remain relatively simple. For one, the legislature sought to change a "service or guide dog trainer" to "every person" because the service or guide dog trainers "typically begin training dogs at [eighteen] to [twenty] months of age, have the same rights and privileges with respect to access to public facilities as persons with disabilities," but the volunteers who raise the dogs until they are eighteen to twenty months old do not have access to such public facilities under the current law. The rest of the amendments ensure the person accompanied by a service animal in training would have proper identification on the service animal and proper credentials to train the service animal. *Id.*

105. N.J. STAT. ANN. § 10:5-29.3 (West 2002); see WASH. REV. CODE ANN. §§ 70.84.010, .020, .021 (LexisNexis 2008) (implementing policies that do not protect service animals in training). The Chapter entitled "Blind, Handicapped, and Disabled Persons – 'White Cane Law'" declares:

(1) It is the policy of this state to encourage and enable the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled to participate

C. *Case Law: Clark County School District v. Buchanan*¹⁰⁶

In *Clark County School District v. Buchanan*, the Nevada Supreme Court heard a case concerning a public elementary school that refused to allow a music teacher to bring her service animal in training to class.¹⁰⁷ Relevant state law guaranteed access for service animals in training in places of public accommodation, but offered no explicit guarantee of access to work places.¹⁰⁸ The Nevada Supreme Court held that “Buchanan is a trainer of helping dogs and that . . . [the elementary school] is a place of public accommodation,” and the statute entitled her to bring the animal in training to school.¹⁰⁹ The court reasoned that the statute was “intended to protect handicapped persons who rely on a trained dog for assistance from being excluded from public places,” and extended “the same protection to the trainers of assistance dogs, whether they are employees or not.”¹¹⁰ Moreover, “[w]ithout such protection, helping dogs could not be properly trained to assist handicapped individuals who work in public places.”¹¹¹

fully in the social and economic life of the state, and to engage in remunerative employment. (2) As citizens, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places. (3) The blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

Id. § 70.84.010. “For the purpose of this chapter, the term ‘dog guide’ means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons.” *Id.* § 70.84.020. “For the purpose of this chapter, ‘service animal’ means an animal that is trained for the purposes of assisting or accommodating a disabled person’s sensory, mental, or physical disability.” *Id.* § 70.84.021.

106. 924 P.2d 716 (Nev. 1996).

107. *Clark Cnty. Sch. Dist. v. Buchanan*, 924 P.2d 716, 718 (Nev. 1996). Clark County School District (CCSD) refused her request for fear that “the presence of [a dog] in the classroom would distract Buchanan from instructing students. Also, [CCSD] believed it was improper to force students who were afraid of dogs or allergic to dogs to attend music class in the presence of [a dog].” *Id.*

108. NEV. REV. STAT. ANN. § 704.145(1)(b) (2009).

109. *Id.* § 651.075(1)(b) (indicating that “it is unlawful for a place of public accommodation to . . . refuse admittance or service to a person training a service animal”; however, the statute does not include one’s place of employment in the statutory text); *Clark Cnty. Sch. Dist.*, 924 P.2d at 719.

110. *Clark Cnty. Sch. Dist.*, 924 P.2d at 719–20.

111. *Id.* at 720.

The court maintained, however, that the employer retains the right to “place reasonable restrictions” on the rights of its employees.¹¹² Therefore, the court concluded that “the district court properly fashioned its injunction by requiring Buchanan to comply with legitimate restrictions CCSD may place on her training dog’s presence in the classroom.”¹¹³

The *Clark* opinion articulated several policy-based grounds in its reasoning.¹¹⁴ First, it recognized the practical necessity of protecting service animals in training because otherwise they would not receive proper training to assist persons with disabilities who work in a variety of environments.¹¹⁵ Second, the opinion emphasized society’s interest to train service animals. “These dogs allow handicapped individuals to conduct full and productive lives that benefit society,” which is why the court concluded there is a public interest “in facilitating the training of helping dogs.”¹¹⁶ Finally, the decision recognized educational benefits of service animals in training. “[T]he presence of the dogs helps instill in students the importance of community involvement and concern for the well-being of our fellow person.”¹¹⁷ The two dissenting opinions also underscored the need for statutory language to specify the distinction between service animals in training and trained service animals regarding their access rights.¹¹⁸

To avoid the distinction between “in training” and “trained” service animals, a comprehensive statute would need to specify that service ani-

112. *Id.* at 720, 723. Reasonable restrictions are “the right of a helping dog trainer to train a dog in a place of employment must be balanced against an employer’s operational needs.” *Id.* at 723. For example, “[i]n cases where legitimate health concerns are proven, the employer may properly place reasonable restrictions on an employee’s right to train a helping dog as are necessary to prevent health problems.” *Id.* However, the dissent believes: “Today’s ruling would not only permit it, but could subject the hospital to criminal sanctions if the nurse showed up training a helping dog on the job and was either terminated or forced to remove the dog.” *Id.*

113. *Id.* at 720.

114. *See id.* at 720–21 (discussing several reasons based on public policies).

115. *Clark Cnty. Sch. Dist.*, 924 P.2d at 720.

116. *Id.* at 720–21.

117. *Id.* at 721.

118. *Id.* at 721–22. The majority and dissent disagreed about whether a public place of employment was a place of public accommodation. In his dissent, Chief Justice Steffen argued:

The only reasonable inference to be drawn from the statute is that places of public accommodation must be accessible to such persons in the company of their service animals, including helping dogs. These persons are to be *admitted* and/or *serviced*. I do not perceive a basis for concluding that the statute was intended to apply to *employees* of a place of public accommodation, who are neither *admitted* nor *serviced* according to the ordinary and accepted meanings of those terms as used in the statute.

Id.

mals in training are allowed to accompany their trainer to places of employment, while the employer is entitled to place reasonable restrictions on their right to serve operational needs.

IV. PROBLEMS CREATED BY THE CURRENT APPROACH

In a state where the service animals in training are not legally protected, prospective trainers, typically volunteers, must overcome several obstacles in order to bring the service animal in training into an educational institution, a place of employment, a housing facility, and places of public accommodation. Often, the trainer will face obstacles and will be unable to bring the animal to some or all of these places. Even if access can be negotiated, the transaction costs may be a deterrent for volunteers interested in raising a service animal. Several interested volunteers, who are part of local GDB clubs have been unable to raise puppies because they could not obtain permission from one of the aforementioned places. Problems often arise if the service animal in training travels with its trainer from a state offering more protection into a state with minimal protections. These problems, although temporary, are inconvenient barriers for volunteers raising guide dog puppies; and ultimately, the group harmed by these barriers are the disabled who are unable to access properly socialized, trained service animals.

A. *Preparations: Hurdles I Had to Jump Before I Agreed to Raise a Guide Dog Puppy in a State that Does Not Grant Rights and Privileges to Guide Dog Puppies in Training*

Upon learning from the local GDB group leader about how the law in Washington did not extend rights and privileges to service animals in training, I realized I needed to take steps to receive approval to bring my guide dog puppy with me to school, to work, and eventually aboard the airplane when I flew home to Colorado for the holidays. I wanted to make sure everything was in order before I committed to raising a guide dog puppy. However, time was of the essence because the local puppy-raising club was in urgent need of another puppy raiser in order to attain the three-puppy minimum to keep the local club in active status.¹¹⁹

119. There are several reasons why GDB requires the guide dog puppies to be raised within a puppy-raising club, but the most important reason is the significance of the community of raisers that serves as a support system in order to successfully raise the guide dog puppies. For example, when my puppy was struggling at the beginning of her training, I met with the leader of the local puppy-raising club at least twice a week in order to troubleshoot problems and reach a resolution before it was too late.

1. Gaining Access to a Private Educational Institution

In order to ensure I would be permitted to bring my guide dog in training to school I initially met with the Dean of Students at Gonzaga University (GU) School of Law to whom I explained my interest in training a guide dog puppy. He researched the matter to find out if either the law school building or the undergraduate campus had policies in place regarding service animals in training. The 2010–11 GU Student Handbook stated: “Service animals are allowed in the care of their handler.”¹²⁰

The Dean of Students recommended that I write a memorandum to the Academic Affairs Committee (hereinafter Committee) of the Law School to suggest an amendment to the current policy, since the policy did not explicitly contain language about service animals in training.¹²¹ The Committee discussed the memorandum and a potential rule clarification at their next meeting.¹²² The Committee concluded that the policy did not need to be amended because “the current rule is broad enough to encompass an individual student’s administrative request to have a service animal in training on the law school campus.”¹²³ After receiving the email, I diligently sought, and happily received, approval from each of my professors to bring the guide dog puppy to class with me on a regular basis. The approval was granted as long as the puppy would not disrupt the class and no students objected due to allergies or other concerns.

Another puppy raiser in my local Washington club commuted from Idaho where he lives and works as a professor of culinary arts at the nearby community college. Service animals in training are generally protected under Idaho state law; however, they are not explicitly protected in

120. *Gonzaga Student Handbook 2010-11*, GONZAGA UNIV., <http://issuu.com/gonzaga/docs/gustudenthandbook10-11?mode=embed&proShowMenu=true&proShowSidebar=false&layout=http%3A//skin.issuu.com/v/light/layout.xml> (last visited Mar. 6 2012). There was nothing in GU School of Law’s 2010-11 Student Handbook about trained service animals or service animals in training. *Id.*

121. Memorandum from Darcie Magnuson, Second Year Law Student, Gonzaga Univ. Sch. of Law, to Cheryl A. Beckett, Chair, Gonzaga Univ. Sch. of Law Academic Affairs Comm. (Jan. 12, 2010) (on file with *The Scholar: St. Mary’s Law Review on Minority Issues*). In my memorandum, I urged the Committee to clarify the existing policy and amend it to read: “Service animals *and service animals in training* are allowed *inside the law school while* in the care of their handler.” *Id.* I also included in my memorandum minimal background information about the guide dog puppy training process, justifications for the rule clarification, and practical considerations for clarifying the rule. *Id.*

122. Email from Professor Cheryl Beckett, Chair, Gonzaga Univ. Sch. of Law Academic Affairs Comm., to author (Jan. 24, 2010) (on file with *The Scholar: St. Mary’s Law Review on Minority Issues*).

123. *Id.* “[The Committee] thus recommended no law school action at this time. It suggests that you work with [the Dean of Students] in seeking the necessary approval from your professors and classmates.”

educational institutions.¹²⁴ Fortunately, he was able to bring his guide dog puppy in training with him to work. However, during the year that I was involved with the local puppy-raising club at least one other interested puppy raiser was turned down when she sought approval from the public elementary school where she was a teacher. Consequently, she was unable to raise a guide dog puppy.

2. Gaining Access at a Place of Employment

As a volunteer legal intern at the Washington Office of the Attorney General, I was nervous to request permission to routinely bring my guide dog puppy in training to work. It was in my favor that the head attorney at the Spokane office appeared fond of Labrador Retrievers since she had one of her own. Needless to say, in that particular situation, it took little explaining to convince her to let me bring a guide dog puppy in training with me to work as part of the puppy's training and socialization process.

As I attended school in Washington and spent my summers at home in Colorado, during my consideration of raising a guide dog in training I did not know where I would work over the summer. Although a service animal in training is protected by the law in Colorado, the statute does not clearly include places of employment. This absence meant that there was no clear answer during my first few weeks as a volunteer intern with two district court judges in Colorado. Naturally, I was hesitant to ask if I could bring my guide dog puppy in training with me to work at the courthouse. I was fortunate once again because one of the district court judges was a longtime puppy-raising volunteer with Guide Dogs for the Blind, and he had already laid the foundation for allowing guide dog puppies in training in the courthouse and inside judicial chambers. Furthermore, both of my supervising judges were very supportive of puppy-raising and service animals in training.

3. Housing Facilities

As evidenced in the survey of applicable state laws, some statutes include provisions requiring landlords in certain venues to allow service animals in training to live in their housing facility, despite having a no animal policy. For states without statutory text requiring such accommodations, landlords have the discretion not to permit a service animal in training to live in their housing facilities. For example, at least one likely puppy-raiser in Washington made it all the way through the application process until the landlord informed her of the no animal policy, which

124. See IDAHO CODE ANN. § 18-5812B(1)-(2) (2004) (discussing the general admittance and necessary care in public for assistance dogs in training).

prohibited her from having a guide dog puppy in her apartment thereby limiting the program's ability to train animals for persons with disabilities in need.

B. *Difficulties of Raising a Guide Dog Puppy When the Law Affords No Protection*

Throughout the training and socialization process, the volunteers are sometimes prohibited from taking the service animal in training into places of public accommodation and airplanes. These obstacles harm the training and socialization of the puppies because they prevent the service animal in training from being exposed to as many different surroundings as possible. In the end, these obstacles ultimately impact the person with the disability because the service animal might not receive adequate training and socialization. The purpose of taking the service animal in training to places of public accommodation during the early stages of life is to ensure that it will eventually help a disabled person fully interact within society. Even though these issues are being argued from the perspective of the puppy-raiser, the accessibility of the person with a disability is of greatest concern.

1. Public Accommodations

Although the majority of states have enacted laws to grant service animals in training access to places of public accommodation, the laws vary significantly as to how far these protections extend. Because of these disparities, particularly in states where service animals in training and their handlers are not given any rights and privileges, the training and socialization process can be severely hindered. On several occasions, I have been asked to leave a place of public access without the owner showing good cause. For instance, when the animal in training causes disruptive behavior, it is justified to ask a trainer with a service animal in training to leave a place of business; however in my personal experience, the animal in training was not misbehaving. Currently, these businesses are acting legally when they refuse to have a service animal in training inside their establishment. This hurdle is problematic because socialization is vital to an animal's training. The socialization process for the service animals in training provides exposure to different environments, which trains them to become more comfortable in any setting. If the service animal in training is not allowed in certain establishments where the trained service animal will eventually go, this lack of training could harm the future owner because the service animal could have an adverse reaction in an unfamiliar environment.

2. Air Travel

The air travel dilemma is exemplified by the Air Carrier Access Act (ACAA), which does not give trainers of service animals the right to be accompanied in the cabin by a service animal in training.¹²⁵ However, a trained service animal is permitted to fly in the cabin if it is accompanying “a person with a disability.”¹²⁶

Due to changes in pressure, cramped spaces, and a high volume of people, air travel could certainly result in a frightening experience for a service animal. The trainer of the service animal is more capable of working with the service animal in training to correct any anxiety or behavioral problems during the flight. If the service animal in training exhibits warning signs during training, the organization would know not to place this particular animal with a person who uses air transportation. Otherwise, if the trained service animal was never exposed to air travel during the training phase, the service animal could have an unexpected anxiety or behavioral problem during or after the flight that could potentially harm the person with a disability. If the service animal's problems are too severe, then the person with a disability might be unable to travel by plane because they could not depend on the service animal. Therefore, the ACAA needs to be amended in order to ensure that service animals in training are adequately trained and comfortable in any environment.

V. PROPOSED AMENDMENTS AND ANALYSIS

The Americans with Disabilities Act (ADA), the Air Carrier Access Act (ACAA), and the Fair Housing Act Amendments (FHAA) need to be amended in order to ensure that service animals can be effectively and comprehensively trained. Providing legal protection for service animals in training addresses the problems created by the current approach as set out in Section IV of this Note, and enhances opportunities for persons with disabilities to truly enjoy full and equal access to society.

A. Proposed Amendments

In order for all of these statutes to comport with the scope of the ADA, it is necessary to amend both the ACAA and the FHAA. To keep the proposal modest, the suggested revisions closely resemble the existing language from the existing ADA.¹²⁷

125. See 49 U.S.C. § 41705 (2006) (excluding discussion of guide dogs in training and other service animals flying aboard aircraft).

126. 14 C.F.R. § 382.117(a) (2010).

127. See 28 C.F.R. § 35.104 (2001) (often called Title II); 28 C.F.R. § 36.104 (2007) (referred to as Title III). This proposal includes keeping the ADA limits on the different species of service animals as well as the exclusion of emotional support animals.

1. The Americans with Disabilities Act

The general section of the ADA should be amended to include a new section defining service animals and expanding the rights of service animals and the trainers of service animals. The definition of service animal could be adopted from the Title II and Title III regulations, which became effective in March of 2011, with some added language (indicated by brackets) about service animals in training:

Service animal means any dog that is individually trained [or is in the process of being 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. 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, or companionship do not constitute work or tasks for the purposes of this definition.¹²⁸

The new section will also explain that the same rights enjoyed by persons with disabilities and trained service animals under Title I will also extend to trainers of service animals and service animals in training. In other words, a trainer of a service animal shall enjoy the same rights as a person with a disability who requests a reasonable accommodation in the workplace for his or her service animal.

Title II and Title III of the ADA should be amended by adopting the service animal language from the newest regulations that became effective in March of 2011 with new language about service animals in training indicated by brackets. The amendment will grant trainers of service animals and service animals in training the same rights as persons with disabilities and trained service animals:

128. 28 C.F.R. § 35.104 (2011).

(a) General. Generally, a public entity [under Title II or a place of public accommodation under Title III] shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability [or an official trainer of a service animal in training who is qualified to train the animal by a recognized organization.]

(b) Exceptions. A public entity [or a place of public accommodation] may ask an individual with a disability to remove a service animal [or a service animal in training] from the premises if

1. The animal is out of control and the animal's handler does not take effective action to control it; or
2. The animal is not housebroken.

(c) If an animal is properly excluded. If a public entity [or a place of public accommodation] properly excludes a service animal [or a service animal in training] under § 35.136(b), it shall give the individual with a disability [or an official trainer of a service animal] the opportunity to participate in the service, program, or activity without having the service animal on the premises.

(d) Animal under handler's control. A service animal [or a service animal in training] shall be under the control of its handler. A service animal [or a service animal in training] shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means). [A service animal in training shall have a vest, jacket or other identification that visibly identifies it as a service animal in training.]¹²⁹

(e) Care or supervision. A public entity [or a place of public accommodation] is not responsible for the care or supervision of a service animal [or a service animal in training.]

(f) Inquiries. A public entity [or a place of public accommodation] shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether the animal qualifies as a service animal [or a service animal in training]. [If believed to be a service animal], [a] public entity [or a place of public accommodation] may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. [If be-

129. A service animal in training should have a vest, jacket, or other identification that visibly identifies it as a service animal in training so as to give the general public notice that it is a service animal in training and to prevent people from abusing the rule.

lieved to be a service animal in training, a public entity or a place of public accommodation may ask the organization for which the service animal in training is being trained and what work or task the animal is being trained to perform.] A public entity [or a place of public accommodation] shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally a public entity [or a place of public accommodation] may not make these inquiries about a service animal [or a service animal in training] when it is readily apparent that an animal is trained [or is being trained] to do work or perform tasks for an individual with a disability (e.g., the dog is guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with observable mobility disability).

(g) Access to areas of public entity [or a place of public accommodation]. Individuals with disabilities [or official trainers of service animals] shall be permitted to be accompanied by their service animals [or service animals in training] in all areas of a public entity's facilities [or places of public accommodation] where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

(h) Surcharges. A public entity [or a place of public accommodation] shall not ask or require an individual with a disability [or an official trainer of a service animal] to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity [or a place of public accommodation] normally charges individuals for the damage they cause, an individual with a disability [or an official trainer of a service animal in training] may be charged for damage caused by his or her service animal or [service animal in training.]¹³⁰

Remedies available for a violation of this amendment will be consistent with the existing remedies available under Title I, Title II, and Title III of the ADA, and dependent upon the type of harm caused by the violation.

2. The Air Carrier Access Act

The Air Carrier Access Act (ACAA) should add language amending the general section of the statutory text to state: "An official trainer of a service animal accompanied by a service animal shall have the same rights as a disabled person accompanied by a trained service animal."

130. *Id.* § 35.136.

The remedies available under the current ACAA should also be available under the suggested amendment.

3. The Fair Housing Act Amendments

The Fair Housing Act Amendments (FHAA) should be amended to provide: “Official trainers of service animals accompanied by a service animal in training shall enjoy the same rights and protections as persons with disabilities and trained service animals.” In other words, this right is not absolute, but the landlord must make reasonable accommodations for the service animal in training as it would for a trained service animal.¹³¹ The definition of “service animal” or “service animal in training” would be consistent with the ADA’s most recent requirements, and the person will be liable for any damage caused by the service animal.¹³² The remedies available for a breach of this obligation shall be consistent with the remedies available under the FHAA when a landlord fails to provide a reasonable accommodation for a person with a disability.

B. *Argument*

1. The Nature of This Proposal

This Note proposes amending the statutory texts of the ADA, the ACAA, and the FHAA to include protections for service animals and service animals in training rather than proposing new or amended regulations. Existing regulations, which currently provide the only protection for service animals, could be administratively withdrawn at any time by the implementing regulatory agency. Textual protection for service animals and service animals in training in the ADA, the ACAA, and the FHAA, ensures that the protections for service animals and service animals in training could only be altered by Congress amending legislation.

The proposals use the current language found in state statutes and federal regulations to the extent practicable to keep the proposal modest. For example, the ADA regulations recently amended the definition of service animal to include only dogs.¹³³ The ADA regulations also do not include protections for therapy animals or emotional support animals.¹³⁴

131. See 42 U.S.C. § 3604(f)(3)(B) (2006) (pointing out that refusing to make reasonable accommodations when necessary is discrimination).

132. See 28 C.F.R. § 35.136 (establishing requirements for service animals and their handlers).

133. *Id.* § 35.104 (2011).

134. *Id.* In fact, “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 [service animals].” *Id.*

This proposal remains consistent with those regulations to avoid such controversial subject matter.

2. How This Proposal Responds to the Problems Created by the Current Approach

Amending the ADA, the ACAA, and the FHAA to include protections for service animals in training solves the problems created by the current approach set out in Section IV of this Note. The underlying policy of the ADA would also be more fully realized by adoption of the proposed amendments because the current approach is built on the premise that many people with disabilities rely on service animals, but the reality is that the law does not offer adequate legal protections to comprehensively and effectively train these animals.

These proposed amendments would allow people interested in training service animals to avoid unnecessary obstacles to getting approval to be accompanied by a service animal in training in their housing, work, air travel, and public accommodations.¹³⁵ When landlords do not consent to allow their tenants to have a service animal in training because of a “no pets” policy or employers are unwilling to provide reasonable accommodations to employees, fewer service animals are trained and the underlying policy of the ADA is hindered. During the time I have been involved with GDB, there has always been a shortage of puppy-raisers, which essentially harms the people with disabilities who need to utilize service animals but are unable to get one because of an inadequate supply or a long waiting list.

a. Employment

The above proposal establishes and limits the rights of service animals in training in the same way that the rights of service animals in operation are already limited. For example, an official trainer would not have an absolute right to bring the service animal in training to work. Rather, the employer would be required to make a reasonable accommodation for an official trainer to be accompanied by a service animal in training to the same extent it is currently required for employees with disabilities who wish to bring a trained service animal to the workplace.

b. Public Accommodations

A uniform national approach would eliminate the state patchwork problem by reducing ambiguities and variations created by the current

135. This assumes that the prospective trainer is not renting a duplex or a house that falls outside of the FHAA protections.

method. This would benefit both the service animal trainers as well as the places of public accommodation. Service animal trainers would no longer face uncertainty about whether they are permitted inside a public place. Trainers would also have the ability to expose the service animal in training to many different environments. This would lead to a more comprehensive and complete training program. Ultimately, the service animal would be fully trained, benefitting the end user of the service animal.

Businesses and other places of public accommodation would also benefit from a uniform national approach because the rights of service animals in training would mirror the non-absolute rights of service animals. For example, a disruptive, destructive, or a potentially dangerous service animal in training could be asked to leave a place of public accommodation in the same way that a similar disorderly service animal could be asked to leave a place of public accommodation.

c. Air Travel

As previously mentioned, the current ACAA is clear in stating that the individual air carrier has the discretion to draft its policy to allow (or disallow) a service animal in training aboard aircraft.¹³⁶ Amending the ACAA to allow service animals in training to accompany their trainers aboard airplanes would provide them with more complete socialization training. In turn, the organizations that train service animals could identify in advance animals that may exhibit anxiety onboard an airplane. This would ultimately prevent any unwanted behavior or potential harm when the trained service animal is expected to be assisting or guiding its handler. If such access is denied, then comprehensive training of the service animals is also jeopardized.

d. Housing

The proposed amendments to the FHAA would require a landlord to reasonably accommodate a service animal in training in rental housing even if there is a “no pets” policy.¹³⁷ Currently, if a landlord prohibits a service animal trainer from having a service animal in training in the landlord’s, the service animal trainer herself is unharmed. The person who is harmed by the current approach is the person with a disability who is in need of a service animal, but is stuck on a waiting list because many

136. 14 C.F.R. § 382.117(e) (2010). “If a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, you are not required to accept the animal for transportation in the cabin” *Id.*

137. This assumes that the prospective trainer is not renting a duplex or a house that falls outside of the FHAA protections.

of the non-governmental service animal training programs are in need of volunteer service animal trainers.

3. Additional Benefits Created by the Proposed Amendments

These proposed amendments would not only solve problems but also create additional benefits, including but not limited to the following: creating a national uniform standard among the laws regarding service animals in training, increasing societal awareness about service animals and service animals in training, allowing the service animal trainers to comprehensively train the service animals by providing exposure to many different environments, and easing court dockets by eliminating new legal issues.

a. Uniformity Among the Law for Service Animals in Training

Now more than ever, people are crossing state lines for work, travel, and other ventures. It is not uncommon for people to live in one state and work in another. This lends support to the assertion that there should be a uniform law regarding service animals in training instead of the current patchwork of state laws. The current hodgepodge of state laws is simply not workable in the reality of multistate living.

The above-proposed amendments create a needed national standard. Such uniformity would remove the existing confusion about where service animals in training are or are not granted access. Businesses, restaurants, and other places of public accommodation would know whether service animals are permitted inside their establishment. Similarly, trainers of service animals would know where they could, or could not, take a service animal in training and a national standard would clarify the qualifications for training service animals. It would also reduce transaction costs for trainers, as they would no longer have to negotiate with schools, employers, air carriers, and the like, thus making it easier for trainers to volunteer for this work.

b. Societal Awareness Regarding Service Animals and Service Animals in Training

By protecting the service animals in training with a uniform law, societal awareness about service animals and service animals in training would increase. I can personally attest to this because nearly every time I took my guide dog puppy in training into a public establishment, people curious about the training process stopped to ask questions. They usually inquired about Guide Dogs for the Blind, how long I worked with the puppy, if I was compensated, or about service animals in general. Others simply wanted to remark on the cuteness of the puppy. These routine

interactions create understanding about the remarkable role of service animals and build appreciation for the training program.

These conversations also provide the trainers with an opportunity to educate the general public about what is, or is not, appropriate behavior around service animals and service animals in training. For example, many adults and children do not understand that working service animals and service animals in training are not pets and therefore are not to be pet while they are on duty. When people pet the dog without permission, the puppy-raisers have the opportunity to educate them. It is better for the puppy-raiser to educate the general public than to leave this public education to a person with a disability who is actively depending on the animal.

c. More Comprehensive Training Programs of Service Animals in Training

The proposed amendments will not only provide a more comprehensive and uniform protection, but they will also allow the service animals in training to receive more comprehensive training. Official trainers would not have to deal with the uncertainty of being denied access. The service animals in training would be exposed to as many environments and distractions as possible before they are trusted with a multitude of responsibilities. In the end, these amendments would benefit persons with disabilities by making sure they receive well-trained and well-behaved service animals.

d. No New Issues for the Courts to Confront

Amendments to the ADA, ACAA, and FHAA to extend rights to service animals in training would not result in new legal issues for the courts to confront. Instead, service animals in training and the trainers would face the same issues that persons with disabilities using a service animal encounter on a daily basis. For example, what is a public accommodation or a public place where service animals in training would be granted access? What is a reasonable accommodation for housing purposes?¹³⁸

138. See *Proviso Ass'n of Retarded Citizens v. Vill. of Westchester*, 914 F. Supp. 1555, 1562 (N.D. Ill. 1996), *overruled by* *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437 (7th Cir. 1999) (defining reasonable accommodation as "changing some rule that is generally applicable so as to make its burden less onerous on the handicapped individual"). However, there is not an "obligation to do everything humanly possible to accommodate a disabled person; cost (to the defendant) and benefit (to the plaintiff) merit consideration as well." *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995). Thus, "[i]n most circumstances, waiving a no-pet rule to allow a disabled person the assistance of a service animal is a reasonable accommodation." *Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1257 (D. Haw. 2003).

What is a reasonable accommodation in the employment context?¹³⁹ How are service animals in training to be identified—documentation, identification cards, a vest, a harness?¹⁴⁰ Does the service animal in training need to be part of an organization whose sole purpose is to train service animals, or can an individual train a service animal? What if people in places of public accommodation, a workplace, or another place where a service animal is permitted and present are allergic to pet dander? What about poorly behaving service animals in training? What types of animals can be trained as service animals?¹⁴¹ All of these are valid questions and the decisions would equally affect the trainers of service dogs and the disabled individual who relies on their services.

4. How to Address the General Public's Concerns About Service Animals in Training

Because giving service animals in training similar protections as trained service animals would likely lead to an increase in the number of animals in public places, this may create more problems or anxiety for people who are allergic to animals or are afraid of them. If problems arise, then the benefits and burdens should be analyzed for the person with severe allergies or a fear of animals as well as for the service animal trainer on a case-by-case basis.

Unfortunately, some people take advantage of or abuse the rights and privileges established for persons with disabilities to be accompanied by a service animal. For example, people may claim a certain animal is a service animal in order to bring a pet to places where the pet would otherwise be forbidden. Likewise, it is foreseeable that people will try to use the proposed amendment to their benefit by claiming they are training their pet to become a service animal. One solution to combat this problem is to only allow qualified trainers of recognized service animals training organizations to be accompanied by a service animal in training. A

139. See *McDonald v. Dep't of Env'tl. Quality*, 214 P.3d 749 (Mont. 2009) (finding sufficient evidence to prove that employee "needed" nonskid floors in order to accommodate her service animal, and as a result, her request for nonskid floors was reasonable); *Clark Cnty. Sch. Dist. v. Buchanan*, 924 P.2d 716 (Nev. 1996) (holding a teacher who proposes to place a service dog in training under her desk or in another classroom is a reasonable accommodation).

140. The statutory language will mandate what is necessary for identification purposes, both for service animals and service animals in training.

141. Even though this issue is not the subject of this Note, current case law details what types of animals qualify as service animals under the ADA. *E.g.*, *Rose v. Springfield-Greene Cnty. Health Dep't*, 668 F.Supp.2d 1206, 1214 (W.D. Mo. 2009) (holding that animals who provide mere comfort or reassurance are not considered service animals under the ADA); *Prindable*, 304 F.Supp. 2d at 1254–55 (holding a person must first show evidence of a handicap in order to use a service animal).

qualified trainer is someone who received proper training from an organization that trains service animals, and is not necessarily a professional service animal trainer. This means that the proposed revisions will protect puppy-raising volunteers. Even though it is possible that people will still abuse this policy, at least a line has been drawn for enforcement purposes. Additionally, requiring the service animal in training to be easily identified by a vest or a jacket emblazoned with the name of the organization should prevent people from easily abusing this law.

VI. CONCLUSION

Disability law is built on the premise that service animals are crucial for the enjoyment of full and equal access to society by persons with disabilities, as well as their ability to be productive community members. Service animals can only be effective in these functions if they are adequately trained to behave properly in all environments, including the workplace, school, restaurants, airplanes, and housing. The reality is that this training is performed virtually exclusively by non-governmental organizations and volunteers, and the current laws limit and often actually bar necessary training. Legal protection for service animals in training, coextensive with existing legal protection for trained service animals, is a modest change which would likely result in major improvement in both availability and full training of service animals.

The necessary means to accomplish this end is to amend the Americans with Disabilities Act (ADA), the Air Carrier Access Act (ACAA), and the Fair Housing Act (FHA) to include rights and privileges for service animals in training. The current state-by-state patchwork approach is inadequate to carry out the underlying policy of the ADA. When people training service animals are denied access to places of public accommodation, when landlords refuse to allow service animals in training because of a “no pets” policy, and when employers are unwilling to provide reasonable accommodations to employees interested in training a service animal, then fewer service animals are trained, and those that are available may be less than comprehensively trained. When this occurs the individuals who are suffering are those with disabilities.



Dedicated to Jeanette, (pictured above) and all the other service dogs that allow the disabled to more fully enjoy life.