



July 9, 2018

VIA ELECTRONIC SUBMISSION

Ms. Blane Workie
Assistant General Counsel, Office of Aviation Enforcement and Proceedings
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Re: DOT–OST–2018–0068

Dear Ms. Workie:

The National Disability Rights Network (NDRN) appreciates the opportunity to comment in response to the Advance Notice of Proposed Rulemaking (ANPRM) published by the Department of Transportation (Department) concerning access for service animals, including emotional support animals, under the Air Carrier Access Act (ACAA). The notice was officially published for comment on May 23, 2018.

NDRN is the non-profit membership association of Protection and Advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories (American Samoa, Guam, Northern Mariana Islands, and the United States Virgin Islands). In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A System comprises the nation's largest provider of legally-based advocacy services for persons with disabilities.

Enactment and enforcement of the ACAA has long been an important area of concern for both NDRN and the P&A agencies we represent. Individuals with disabilities often call the P&As with complaints concerning the treatment they have received from airlines. P&As work with airlines through communication and offers of training and technical assistance, but have to refer these individuals to the Department for enforcement of their rights guaranteed under the ACAA. As mentioned below, NDRN staff also participated in the negotiated rulemaking that occurred in 2016 in an attempt for a number of stakeholders to reach agreements on these critical issues.

Service animals and emotional support animals play a vital role in the lives of many people with disabilities. When unjustified restrictions are placed on access for these animals, the people with disabilities who depend on their assistance are harmed. Without the ability to travel, they may be unable to work, receive needed health care, or travel for pleasure like other Americans.

In 2016, the Department's Accessible Air Transportation (ACCESS) Advisory Committee conducted a negotiated rulemaking that included whether to amend the ACAA's definition of a service animal. Throughout the process, members of the disability community, including NDRN representatives, expressed concern about the unequal treatment of passengers with disabilities who use psychiatric service animals and the lack of training by air carrier personnel and contractors about service animals. Although stakeholders worked in good faith to develop a consensus document that would address the concerns of passengers with disabilities and air carriers, an impasse during negotiations prevented further action.

The Department's recently published ANPRM presents for discussion many of the same questions previously considered by the members of the ACCESS Advisory Committee. In order to provide additional information to facilitate the Department's efforts to draft a revised regulation that appropriately considers the needs of passengers with disabilities, we will address each topic of discussion in the order presented:

Psychiatric Service Animals

The Department should amend its regulations to require air carriers to provide access to psychiatric service animals on the same basis as all other service animals. Carriers must not be permitted to require documentation or other notifications for psychiatric service animals that are not required for all other service animals. There is no legitimate reason to subject psychiatric service animal users to more stringent access requirements than other types of service animal users that provide alerts for individuals who have seizures or service animals that assist in retrieving dropped objects. To do so only perpetuates the myth that psychiatric service animals are inferior to service animals used to mitigate other types of disabilities.

It appears that one impetus for documentation and advance notification for psychiatric service animal users is the assertion that this is the only method available to the carriers to deter fraud. However, any discussion about fraudulent service animals should be addressed separately from a discussion about whether psychiatric service animal users should have to provide intrusive medical documentation and advance notice not required for other service animal users. The Department's current treatment of psychiatric service animals singles out individuals with mental health disabilities for different more onerous requirements than people with other disabilities.

Documentation and notification requirements are not silver bullets to allow carriers to predict an animal's behavior. If so, carriers would not be seeking revisions to the current policy. There will always be a requirement for carriers to evaluate an animal's behavior and to take action as appropriate to deal with safety concerns. Individuals with disabilities who use service animals, regardless of their disability, must not be required to provide third-party medical documentation regarding their disability or their need for a service animal.

Instead, carriers need to invest in training for their personnel and contractors to help them in interacting with passengers with disabilities who use any type of service animal. If there is a question as to whether an animal is a service animal, then the carrier should be allowed to ask the individual if the animal is a service animal required due to a disability and what work or task the animal has been trained to perform. If the person does not have a disability, then the inquiry can stop as the animal is not a service animal (or emotional support animal under the ACAA). If the person has a disability, but cannot describe work or a task the animal has been specifically trained to perform then the animal is also not a service animal.

Emotional Support Animals

Passengers with disabilities who use emotional support animals must have access for their animals under the ACAA. Emotional support animals are different from service animals in that they are not trained to perform work or tasks to mitigate a disability. Instead, the mere presence of an emotional support animal may be crucial to allowing a person with a disability to travel by air. If a person with a disability depends on an emotional support animal, but access is not available, then they may be unable to benefit from air travel. Even if their animal is able to travel as a pet, the cost can be prohibitive¹ because people with disabilities generally have lower incomes.²

Although access for emotional support animals must be preserved, revised regulations should explicitly state that emotional support animals must be trained to behave in public. NDRN would not oppose a requirement for travelers with emotional support animals to attest that their animal has the needed behavioral training. Any such attestation must use language that is easily understood by people who have cognitive or intellectual disabilities.

Carriers should also be required to provide uniform, detailed data to the Department regarding the number of emotional support animals enplaned and any incidents directly attributable to those animals. This will ensure that the public has accurate information

¹ Airlines charge fees for pets ranging from \$75 to \$125 per animal each way and Hawaiian Airlines charges \$175 for trips from Hawaii to the mainland.

² According to the 2015 American Community Survey, the median earnings in the past 12 months for people with disabilities was \$21,572, which is 69% of the median earnings for those without a disability. News Release, U.S. Census Bureau, Facts for Features: Anniversary of Americans With Disabilities Act: July 26 (June 6, 2017) <https://www.census.gov/newsroom/facts-for-features/2017/cb17-ff11-disabilities.html>.

regarding the impact of emotional support animals on carriers and passengers as opposed to the anecdotal data currently cited by the airlines. Uniform carrier reported data will also help the Department to more easily respond to trends.

Containment of Emotional Support Animals

NDRN does not support a requirement for emotional support animals to be contained in pet carriers. This decision to oppose such containment arises from two main concerns. First, the requirement to contain an emotional support animal in a pet carrier will limit the size of the animal allowed. Second, it would limit the use of the animal during the flight to provide for the well-being of the passenger.

Instead, we support a requirement for emotional support animals to be trained to behave in public. We also support requiring people with disabilities to specifically attest that their emotional support animal has been trained to behave in public. We believe that this will be a much more effective way to address present concerns with the behavior of emotional support animals than the requirement for a pet carrier.

Species Limitations

Under the ACAA, carriers are not currently required to accommodate “certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin.” 14 C.F.R. § 382.117(f). The Department’s regulation further states that for other animals presented, including miniature horses, pigs, and monkeys, the carrier is required to determine “whether any factors preclude their traveling in the cabin as service animals.” *Id.* Factors that can be considered include “whether 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, whether it would cause a significant disruption of cabin service, [and] whether it would be prohibited from entering a foreign country that is the flight’s destination.” *Id.* The Department’s guidance states that such consideration of “unusual animals such as miniature horses, pigs and monkeys should be evaluated on a case-by-case basis.” 68 Fed. Reg. at 24,877.

Media stories highlighting turkeys, ducks, and peacocks being used as service animals or emotional support animals by airline passengers have contributed to the fervor to limit the species of animals allowed on airplanes. It should be noted that Delta, United, Alaska, Frontier and Spirit are happy to transport small household birds as pets as long as passengers are willing to pay the pet fees and Frontier also accepts as pets rabbits, guinea pigs and hamsters.

The vast majority of service animals and emotional support animals are dogs. Although carriers could legitimately exclude some of the headline-grabbing animals under the current regulations, we would support imposing additional limitations on the types of species that may be used as service animals or emotional support animals under the

ACAA. Any limitations, however, must preserve access for all species and sizes of dogs, cats, rabbits, miniature horses, capuchin monkeys, and other species that can be trained to behave appropriately and be safely brought on airplanes.

It is important to preserve access for non-canine species. For example, the opportunity to interact with a rabbit's fur may provide emotional support to a person with a disability. Carriers should also be required to transport capuchin monkeys but we would support a requirement for them to be confined to pet carriers. Such a requirement would ensure that someone who depends upon the service of a capuchin monkey at his or her home and destination will be able to travel by air. Other species of animals would not be considered service animals or emotional support animals and could be legally excluded by the carrier.

Number of Service Animals per Passenger

NDRN supports limiting the number of service animals or emotional support animals that a passenger with a disability may bring on an aircraft to two animals. Some service animal users may need more than one service animal to accommodate multiple disabilities or to effectively mitigate a single disability. Limiting the number of service animals or emotional support animals to two per passenger should provide sufficient access for the vast majority of service animal or emotional support animal users.

Passengers who require more than two service animal or emotional support animals should be allowed to request an exception to the limitation. However, any passenger requesting an exception for an additional animal may be required by the carrier to provide sufficient justification for an additional animal. Such justification could include advance notice and documentation, including from the individual, about the need for an additional animal.

Social Behavior Training

Airline passengers who use service animals to mitigate a disability of any type should not be required to attest to their animal's behavioral training. Service animal users are not required to attest to their animal's ability to behave in order to use their animals on Amtrak, commuter rail, and other modes of public transit regulated by the Department. Although air travel is a unique form of transportation, there is no credible evidence showing that there are sufficient incidents involving service animals that would warrant such a burden being placed on each service animal user.

NDRN would not, however, oppose a requirement for emotional support animal users to attest to their animal's ability to behave in public. Emotional support animals do have more limited public access under federal law; thus, requiring such an attestation may be justified. Furthermore, instituting such a requirement for emotional support animals would allow carriers to determine if the incidence of problems decreases and whether or not attestations are a worthwhile deterrent.

The need for carrier training about service animals and emotional support animals and support for personnel and contractors is critical. The Department's current guidance provides examples to help a carrier determine whether or not a service animal or emotional support animal poses a direct threat and should thus be excluded from air travel: "animal displays threatening behaviors by growling, snarling, lunging at, or attempting to bite other persons on the aircraft." 68 Fed. Reg. at 24,876. These behaviors require individual observation of an animal in order for the carrier's personnel or their contractors to determine whether or not an animal should be allowed to travel. Carriers should deploy additional personnel as needed to assist passengers at the gate and to observe animal behavior and to respond to any problems either observed or reported by passengers.

Control of the Service Animal

A service animal or emotional support animal must be under the control of the handler at all times. NDRN would support amending the ACAA regulations to require that all service animals and emotional support animals be harnessed, leashed, or tethered unless the device interferes with the animal's work or the individual with a disability is unable to hold a tether due to his or her disability. In those cases, the individual must be allowed to control his or her service animal or emotional support animal using voice, signal, or other effective means to control the animal.

Large Service Animals

Space on an aircraft is limited and ensuring sufficient space for service animals or emotional support animals can be challenging. In general, the aircraft cabin is at best a challenging environment for many people with a range of disabilities. There are currently no specific spacing requirements laid out under the ACAA to accommodate access for people with disabilities in air travel.

Carriers are required to provide priority access to bulkhead seating for a passenger who uses a service animal or emotional support animal. 14 C.F.R. § 382.81(c). However, if those seats are not in the passenger's ticketed class of service, then under current regulation, no such access is required. 14 C.F.R. § 382.87(f). Instead of limiting the size of service animals or emotional support animals, the Department should amend its seating accommodations regulations to ensure improved access to seats with space for those individuals who use these animals.

The imposition of animal sizing requirements would lead to arbitrary decisions when solutions may instead best be worked out on a case-by-case basis depending on passenger load and aircraft seating configuration. Some passengers may have no problem sharing foot space with a service animal, particularly if the flight is short. Overall size and weight restrictions, even for emotional support animals, would likely be difficult to enforce and would limit the ability of carriers to accommodate a passenger with a large service animal or emotional support animal even when a satisfactory arrangement could have been available.

Veterinary Forms

The Department should amend its ACAA regulations to explicitly prohibit air carriers from requiring all passengers who use service animals or emotional support animals to complete veterinary forms prior to travel as a blanket access requirement for their animals. Such a requirement would create significant burdens for people with disabilities attempting to travel by air due to the cost associated with asking a veterinarian to provide such attestations, potential time constraints when travel is immediate, or more likely the reluctance of a veterinarian to certify an animal's behavior since he or she would likely have no, or limited, information on which to make such a judgement.

Veterinary health information has little to do with whether a service animal or emotional support animal would pose a direct threat or a fundamental alteration of passenger service. While vaccination information will be helpful if a passenger is bitten by a service or emotional support animal, it does not indicate whether or not an animal would be a direct threat or whether its presence would result in a fundamental alteration of the carrier's operations. Instead, concerns with direct threat should be individualized and based on observable actions. Access for service animals and emotional support animals is an important civil right and where there is no evidence that an animal has behavior problems, the passenger should not be subjected to additional documentation requirements.

Code-Share Flights

NDRN would support removing liability from U.S. carriers for code-share flights as long as foreign carriers remain prohibited from flying domestic routes. If those prohibitions are ever removed, then foreign carriers should be subject to the same requirements as U.S. carriers when flying those routes.

Thank you for the opportunity to provide comments on this important matter. If you have any questions, please contact Kenneth Shiotani at 202-408-9514 x126 or kenneth.shiotani@ndrn.org.

Sincerely,



Curt Decker
Executive Director