



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

April 6, 2020

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, RIN 2105–AE63, Traveling by Air with Service Animals,  
Notice of Proposed Rulemaking

Dear Ms. Workie,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Rights and Transportation Task Forces submit the following comments in response to the above-captioned notice of proposed rulemaking concerning traveling by air with service animals under the Air Carrier Access Act (ACAA). CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

***The Proposed Rule Imposes Unduly Onerous and Unnecessary Burdens on Service Animal Users to Provide Documentation***

For many people with disabilities, a service animal provides critical support that allows them to be independent, active participants in their communities. As Congress recognized in enacting the ACAA, the civil rights of people with disabilities to travel by plane that are guaranteed under the ACAA are vital. Those rights are hollow if people must overcome extraordinary hurdles to exercise them. The documentation requirements that DOT proposes for service animal users—allowing air carriers to require all passengers with disabilities who use service animals to provide a health form for their service animal and also attest to their animal’s behavior and training before being permitted to fly—would have precisely that effect.

*The Proposed Documentation Would Impose Onerous Burdens*

Many people with disabilities would be unable to secure documentation from a veterinarian concerning their service animal’s behavior, as veterinarians frequently would have little basis on

which to draw conclusions about the animals' behavior. Furthermore, the health form requirement would create significant burden for passengers with disabilities due to the cost associated with asking a veterinarian to fill out forms concerning a service animal's health status. Delays in securing documentation from veterinarians would also mean that many people with disabilities would be unable to secure the documentation in the time needed before their scheduled flights.

Finally, if the Department were to adopt these proposed documentation requirements, many people with disabilities would be caught unaware until it is too late to secure the appropriate documentation before their flights. Individuals with disabilities have been permitted to fly with service animals without such documentation for decades; the disruption to people's lives that would be caused by the sudden imposition of unexpected documentation requirements unlike any that have ever been imposed in recent decades in air travel, public accommodations, public services, workplaces, or housing cannot be understated.

### *The Proposed Documentation is Unnecessary*

The proposed documentation requirements are not only burdensome but also unnecessary. For decades, people with disabilities have used service animals in a wide variety of settings, including public accommodations, public services, workplaces, and other settings without providing documentation of these animals' health or behavior training. Covered entities under the Americans with Disabilities Act have not clamored for documentation of service animals' health status or behavior training, nor have there been widespread reports of problems due to the lack of such documentation. If the type of documentation described in the proposed rule were necessary, it would be similarly necessary for health and safety in these other settings. Years of experience demonstrate that this is not so.

Nor is service animal health information necessary to determine whether a service animal would pose a direct threat or a fundamental alteration of passenger service. While evidence of veterinary health might be useful in the rare event that a passenger is bitten or otherwise harmed by a service animal (as would be true of similar incidents in settings governed by the ADA), 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. Just as such concerns are not a basis for allowing covered entities under the ADA to demand such health information from service animal users, it is not a basis for airlines to demand it.

Allowing airlines to require this type of documentation does not, as DOT claims, harmonize the service animal requirements for the ACAA with the ADA. The Department of Justice's ADA regulations *forbid* hospitals, doctor's offices, pharmacies, and grocery stores from asking for such documentation as a matter of entry, even during a pandemic. There is simply no credible evidence showing that such a burden is warranted in air travel but not in other critical access areas.

### *The Proposed Documentation Would Create Confusion*

Furthermore, introducing such documentation requirements for all service animal users would create additional confusion and would not guarantee safety or security for airline employees and passengers. For example, a service animal user seeking to fly would be subject to these documentation requirements. Would such requirements also be in place for a parent who uses a service animal who receives a pass to go to the gate to meet his or her unaccompanied minor child? The airport, which would be governed by the ADA, could not require such documentation as a matter of entry to the airport. In this scenario, the parent would not be boarding a flight but would otherwise be in the gate area, in close proximity to passengers and air carrier contractors and staff. Gates in busy airports are typically crowded, but those airports cannot require individuals with service animals to produce the type of documentation DOT proposes. However, a passenger flying with a service animal on a nearly empty plane would need to provide documentation.

Instead of allowing the proposed documentation requirements, the Department should explicitly prohibit air carriers from requiring all passengers who use service animals to complete behavior and training attestation and animal health forms prior to travel as a blanket access requirement for their animals.

### *The Department Must Ensure Safeguards if it Does Permit These Documentation Requirements*

In the event that the Department disregards these concerns and permits such documentation requirements, we believe that the forms should be uniform standardized forms designed by the Department. This would at least ensure consistency and remove any confusion that could result from word choice or phrasing differences between airlines. Furthermore, the forms must use language that is easily understood by people who have cognitive or intellectual disabilities. Airlines should be required to have systems allowing the forms to be attached to a passenger's records so that they need not be completed more than once per year.

If the Department permits these documentation requirements, carriers should be prohibited from requiring that the forms be provided prior to the date of travel to minimize additional burden on passengers with disabilities who use service animals. Carriers should also be prohibited from requiring that these passengers arrive one hour prior to check-in to process the documentation. If the training and behavior attestation and health forms are required, then the only processing that should be required is a quick review to ensure that the forms are properly completed. Observing the animal should not take additional time. The airline could ensure that the forms get matched to the passenger's record for future travel at a later time. There is simply no justification for further burdening passengers with disabilities simply because they use a service animal.

### **We Support the Shift to Equal Treatment for Psychiatric Service Animals**

We strongly support the Department's proposal to treat psychiatric service animals equal to all other service animals. The current rules not only promote stigma and impose tremendous unnecessary burdens on people with psychiatric disabilities, but the Department's enforcement of them would likely violate Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. *See, e.g.,*

*Hargrave v. Vermont*, 340 F.3d 27, 36-37 (2d Cir. 2003). The Department cannot lawfully treat individuals with mental disabilities differently from similarly situated individuals with physical disabilities. The Department’s proposal recognizes that there is no legitimate reason to subject psychiatric service animal users to more stringent access requirements than users of other types of service animals. Requiring such documentation only serves to single out individuals with mental health disabilities, and perpetuates the myth that psychiatric service animals are more likely to be dangerous or fraudulent than service animals used to mitigate other types of disabilities. Psychiatric service animals are treated no differently from other service animals under all other disability rights laws.

We are concerned about the Department’s statement that it “would consider revisiting whether it is reasonable and appropriate to allow additional requirements for the use of such animals if there is a demonstrated need” for such action. As years of experience with equal treatment of psychiatric service animals under the ADA have shown, there is no basis for additional requirements. The Department notes that such a revisiting might be warranted upon “a notable increase in instances of passengers falsely representing pets as mental-health related service animals.” However, the Department provides no information about why suspicion should be cast on psychiatric service animals but not animals that assist passengers with other non-apparent disabilities. The Department must stop treating service animal users with suspicion simply because they have psychiatric disabilities. Such unequal treatment is unjustified and, frankly, confounding.

### ***We Oppose the Elimination of Protection for Emotional Support Animal Users***

Passengers with disabilities who use emotional support animals must continue to have access for their animals under the ACAA. While emotional support animals are not trained to perform specific tasks, they nonetheless mitigate the effects of a disability. Support animals serve functions for which task training is unnecessary—for example, a support animal’s presence may interrupt harmful and frightening flashbacks. Individuals who use them must have disabilities covered by the law, the animals must accommodate that disability, and like service animals, they may be excluded if they have disruptive or dangerous behaviors. Although much scorn has been heaped on emotional support animals and their users, the Department presents little evidence demonstrating that they are a danger to the traveling public or air carrier employees.

Indeed, many people who use emotional support animals do so because they cannot afford a fully trained service animal that performs tasks in addition to the functions served by support animals. Courses teaching individuals how to self-train a psychiatric service animal are also costly, and often unavailable. The costly pet fees that would be incurred if support animals were not protected, added to the price of air travel, would make such travel prohibitive for many people with psychiatric disabilities, who have among the highest unemployment rates and highest poverty rates of any group.

Further, for many individuals with psychiatric disabilities, medications are ineffective and few or no other clinical mental health interventions are available or successful. Frequently, a service or support animal is the primary intervention that enables a person with a psychiatric disability to succeed with daily activities—and sometimes, to stay alive.

If the Department refuses to continue to interpret the law to provide support animal users with the same protections they currently have, it must at least allow individuals with disabilities who use emotional support animals to fly if they attest that their animal has been trained to behave appropriately (using standardized government forms, with language that is easily understood by people who have cognitive or intellectual disabilities, rather than forms designed by individual airlines).

Furthermore, we do not support a requirement for emotional support animals to be contained in pet carriers. First, the requirement to contain an emotional support animal, which are overwhelmingly dogs, 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.

### **Restraints Should Not Determine Whether An Animal is a Service Animal**

We do not object to the Department's proposal to require that service 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 the latter instances, the individual must be allowed to control his or her service animal using voice, signal, or other effective means to control the animal.

We oppose the Department's proposal to allow air carriers to determine that an animal that is not properly restrained is not a service animal. The Department's own proposed definition of a service animal does not include any reference to the handler's control of the animal. An animal is a service animal if it is trained to do work or tasks for a person with a disability. Whether an animal is properly restrained is more appropriately addressed in the section concerning when a service animal may be refused passage. As under the ADA, passengers with disabilities should be given the opportunity to get their service animal under control. If they cannot, then they should be given the opportunity to fly without the animal on that or another flight, or be rebooked on a later flight with the animal as appropriate.

### **We Oppose Limiting Service Animal Species to Dogs**

Although we do not object to the Department's decision to impose some limitations on the types of species that may be used as service animals, we oppose limiting the definition of a service animal to a dog. While the Department's guidance has long provided that unusual species animals need not be recognized as service animals, at a minimum, all species and sizes of dogs, cats, and miniature horses should be permitted as service animals. It is important to preserve access for common species of service animals such as cats and miniature horses to account for factors (including allergies or other health concerns) that preclude some individuals with disabilities from using dogs as service animals, and in recognition of the important and unique tasks that miniature horses perform for those who use them to accommodate their disabilities.

The decision to eliminate access for miniature horses is particularly concerning because these animals have access to public accommodations as a reasonable accommodation under the Justice Department's ADA regulations. While the Department expresses concern about the size

limitations on aircraft, the current commercial air travel landscape is vastly different than it was at the time the proposed rule was published. It is uncertain what space constraints will be like on commercial aircraft in coming months and years. However, subject to available space on an aircraft, including the handler's willingness to purchase an additional seat, carriers should be required to make reasonable accommodations for miniature horses.

**We Support the Prohibition on Breed or Type Restrictions**

A decision of certain air carriers to exclude specific breeds or types of service dogs, particularly pit-bull-type dogs, led the Department to reiterate in its Final Statement of Enforcement Priorities Regarding Service Animals that such exclusions violate the ACAA. As the Department indicates, carriers should be permitted to exclude a service animal only following an individualized assessment of the animal's behavior. Such an assessment is the best way to determine whether a particular service animal is safe to travel. Moreover, it is highly unlikely that airlines would be able to determine service animals' breeds with consistency and accuracy.

**We Oppose the Proposal to Allow Size Limits for Service Animals**

We oppose the Department's proposal to allow air carriers to limit the size of service animals to those that are able to fit within the passenger's foot space or a passenger's lap. This proposal would inappropriately exclude many service animals that individuals have relied on for years. We support the current requirement for air carriers to reseat passengers next to an empty seat or other location where a large service animal can be accommodated.

In addition, rather than limiting the size of service animals or emotional support animals, the Department should amend its seating accommodation regulations to ensure improved access to seats with additional leg room for those individuals who use these animals. In a time when our nation's taxpayer money is being used to support airlines, accommodation of passengers with disabilities should be of urgent consideration. Space concerns should not be resolved by placing the burden on passengers with disabilities who use larger service animals to purchase an extra seat in order to travel.

Thank you for the opportunity to provide comments on this important matter.

Sincerely,

The Arc of the United States

American Therapeutic Recreation Association

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

CommunicationFIRST

Disability Rights Education and Defense Fund

Epilepsy Foundation

National Association of Councils on Developmental Disabilities

National Council on Independent Living

National Disability Rights Network

National Multiple Sclerosis Society

Paralyzed Veterans of America

VetsFirst