

Animals on Campus Policy – Written Opinion from UH Legal Services

Good Morning Joanne,

This is in response to Interim Chancellor Pagotto’s Legal Services Request dated January 30, 2018 (“request”). You are listed as the contact person in this request.

The request asks for a written opinion on Kapiolani Community College’s (“KCC”) draft Animals on Campus Policy. The request specifically asks about “emotional support or comfort animals” on campus and provides, “[f]aculty and staff are concerned about allowing comfort animals into public areas such as the cafeteria and the library.” The request notes that KCC is clear about the laws on service animals.

In my follow-up discussions with you, you stated that KCC’s Animals on Campus policy was already approved and posted. I later learned that UH Manoa recently made revisions to its Animals on Campus Policy. UH Manoa specifically made revisions to the provisions pertaining to “Service Animals” and they are in the process of sending its draft policy out for union consultation. I also reviewed UH Hilo’s Animals on Campus policy.

Below is my response to the question presented in the request and my recommendations and feedback pertaining to KCC’s policy.

Comfort/Emotional Support Animals

The definition of “Service animals” under the KCC policy is consistent with the American with Disabilities Act (“ADA”). Under Title II of the ADA, a public entity or place of accommodation “shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.” 28 C.F.R. Parts 35.136 (public entities) and 36.302(c) (places of accommodation). However, the ADA does not address comfort, therapy or emotional support animals. As the KCC policy correctly provides, comfort, therapy or emotional support animals do not qualify as service animals under the ADA. Therefore, comfort, therapy or emotional support animals do not have rights under the ADA and KCC does not have the legal obligation to admit them if there is a “no pets” policy on the campus.

Employment and Housing

Title I of the ADA, which applies in employment, does not define “service animals” and it does not require institutions to automatically permit a specific type of animal in the workplace. Instead, animals are treated as a “reasonable accommodation.” Institutions must engage in the “reasonable accommodation” process or the “ADA interactive process” if an employee requests a reasonable accommodation to take his/her service or comfort animal to work. In these situations, the employer has the right to request reasonable documentation that the accommodation is needed.

My understanding is that KCC does not provide any campus housing. However, if KCC decides to provide housing in the future, it will need to revise its Animals on Campus policy or have a separate housing policy that will address a housing provider or facilities’ legal obligation to accommodate “Assistance Animals” (including service and untrained emotional support animals) under the Fair Housing Act.

Comments/Feedback on KCC Animals on Campus Policy

1. Pets - KCC's policy does not address pets on campus. UH Manoa has limited the applicability and scope of its policy to "pets and other animals." UH Manoa's policy allows for pets on campus with certain restrictions, including pets inside campus buildings. UH Hilo also allows for pets on its campus, with restrictions. If KCC is not allowing pets on campus, please be advised that this will be inconsistent with UH Manoa and UH Hilo. In addition, KCC may want to consider the difficulty in enforcing its "no pets" policy on campus grounds if KCC has a lot of individuals who bring their pets on campus grounds.

If KCC will allow pets on campus, then rules and restrictions should be considered and set forth in the policy. Please do not hesitate to send me any draft language for review.

2. Applicability/Scope - I recommend that KCC expressly provide the applicability and scope of its policy. For instance, if law enforcement or first response animals are not going to be addressed, this should be stated in the policy.

3. Emotional support/comfort animals – As discussed above, emotional support, therapy or comfort animals are not "service animals" under the ADA. Exceptions apply in the employment and housing context. If KCC allows for pets on campus and in specific areas, then the same rules would apply to comfort animals. If KCC's policy does not allow for pets, then it should be expressly noted in the policy. In both situations, I recommend that "and emotional support or comfort animals" be deleted from the first sentence under Section V., "Procedures ... Service Animals". Also, delete the entire section and definition of "Comfort or Therapy Animals."

4. Definition for "Service Animals" -

a. Add to the bottom of this section, "Service animals are working animals and not pets. Animals whose sole function is to provide comfort, emotional support, well-being and/or companionship do not qualify as service animals under the Americans with Disabilities Act (ADA)."

b. Add the following (*italics*) to the first sentence, "any dog, *or, in some cases, miniature horse*, that is individually trained to do work or perform tasks for the benefit of an individual with a disability"

5. Section VI., Responsibilities – add "and/or handlers" to subsection A to read, "Animal owners and/or handlers are responsible for clean-up"

6. Other Definitions – KCC may want to consider adding definitions for "disability" and "pets", if pets will be permitted under the policy.

7. Section V, Procedures, Service Animals – add the following:

While a College employee is not required to submit an accommodation request to bring a service animal into a campus building, he or she may seek further information with the

[Equal Employment Opportunities/Affirmative Action (EEO/AA) Office at _____] on services the College can provide to employees with disabilities. In addition to service animals, other types of assistance animals for employees with disabilities may be authorized by the College on a case-by-case basis as a reasonable accommodation in the workplace.

(Note: I pulled this language from the UH Manoa and UH Hilo policies).

8. Contact Information - add contact information (including email addresses) for the departments that are best suited to answer any questions pertaining to this policy and requests for reasonable accommodations, such as Disability Services office and/or EEO/AA office.

9. Union Consultation - I learned that UH Manoa is currently seeking union consultation on its revised Animals on Campus policy. It is recommended by this office that you take the policy down, revise where necessary, and take the appropriate steps in seeking union consultation on the policy. I also recommend that you remove the reference to UH Manoa's policy in the KCC policy until such time UH Manoa posts its approved version.

I am more than happy to meet with you in person to discuss this email, my research, and recommendations. I would also recommend that Director of EEO/AA, Mary Perreira, attend this meeting. I have apprised her of my research and recommendations.

Thank you for allowing me to assist you with this matter.

--

Leslie P. Chinn
University Associate General Counsel
Office of the Vice President for Legal Affairs and University General Counsel
University of Hawaii
[2444 Dole Street](#), Bachman 110
Honolulu, Hawaii 96822
Tel. No.: [\(808\)956-4376](tel:8089564376)
leslie.chinn@hawaii.edu