

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

Submitted via regulations.gov

RE: Traveling by Air with Service Animals Notice of Proposed Rulemaking, DOT-OST-2018-0068 (RIN: 2105-AE63)

Dear Ms. Workie,

The Disability Rights Education & Defense Fund (“DREDF”) respectfully submits the following comments in response to the Notice of Proposed Rulemaking (“NPRM”) published by the Department of Transportation, concerning traveling by air with service animals and emotional support animals under the Air Carrier Access Act (“ACAA”). DREDF is a leading national civil rights law and policy center directed by individuals with disabilities and parents who have children with disabilities. Our mission is to advance the civil and human rights of people with disabilities through legal advocacy, training, education, public policy, and legislative development.

The Department has been actively reviewing its existing service animal regulations since at least 2016. That year, 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. The negotiation did not result in a consensus proposed rule. Thus, in 2018, the Department released an Advance Notice of Proposed Rulemaking (“ANPRM”) that presented numerous questions for discussion, including many of the same questions previously considered by the members of the ACCESS Advisory Committee.

The Department’s NPRM is the latest iteration of those efforts. In our comments, we respond to the Department’s specific questions and proposed regulatory language. Our comments referencing “service animals” refer to an animal trained to perform specific work or tasks to mitigate the effects of a disability. The term “emotional support animal” refers to an animal whose presence and untrained supportive behaviors assist a person with a disability.

I. SERVICE ANIMALS

A. Service Animal Species

DREDF opposes limiting the definition of a service animal to a dog. Instead, all species and sizes of dogs, cats, and miniature horses must have access as service animals. It is important to preserve access for non-canine species in order to account for the health, cultural, and other factors that preclude people with disabilities from using a dog as a service animal.

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 Department of Justice's Americans with Disabilities Act ("ADA:") Title III regulations. The Department's decision to eliminate access for miniature horses is focused on size limitations on aircraft. The April commercial air travel landscape is vastly different than that of February. Today, aircraft are not crowded and access for a miniature horse would not be an issue. 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.

B. Breed or Type Restrictions

The decision of certain air carriers to exclude specific breeds or types of service dogs, particularly pit-bull-type dogs, forced the Department to reiterate in its Final Statement of Enforcement Priorities Regarding Service Animals that such exclusions would be enforced as an ACAA violation. We oppose breed-specific exclusions, as they rely on stereotypes about certain types of dogs—stereotypes that were formed because of the historical abuse and malicious training of pit-bull type dogs by people seeking to exploit them for monetary gain. To be clear, humans make aggressive dogs; certain breeds are not inherently more aggressive. The extensive training requirements that are required for a dog to be considered a service animal more than ensure that a service dog, regardless of breed, is not only nonaggressive, but is exceedingly well-behaved and performs advanced tasks for its owner.

We support the Department's proposal to allow carriers to exclude a service animal only based on an *individualized assessment* of each animal's behavior. Such an assessment does not rely on ill-conceived stereotypes and is the best way to determine whether a particular service animal is safe to travel.

Finally, even if the Department determined that breed or type restrictions were allowed under the ACAA, it remains to be seen how an airline would be able to accurately determine an animal's breed to ensure consistent application of such a preclusion. Thus, this proposal fails both logic and practical implementation.

C. Psychiatric Service Animals

We appreciate 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 violates Section 504 of the Rehabilitation Act. 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 it 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.

Additionally, 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. 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 verse animals that assist passengers with other non-apparent disabilities. The Department must stop treating psychiatric service animals with suspicion as there is simply no justification for such unequal treatment. Furthermore, it is unclear how such increases would be determined or be made publicly available to ensure that reports are based on accurate data.

D. Large Service Animals

We oppose the Department's proposal 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. Although today's passenger travel conditions would mean that travelers with larger service animals could be accommodated with ease, that likely will not be the case in future months when travelers return to the air. We support the requirement for air carriers to reseat passengers next to an empty seat or other location where the animal can be accommodated. However, we believe that the Department must go farther to support access for people with disabilities. Specifically, why should passengers' access be diminished because of decisions made by air carriers to limit personal space in aircraft?

Instead of limiting the size of service 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. The solution must not be to place the burden on passengers with disabilities who use larger service animals by requiring them to purchase an extra seat if they want to guarantee that they will be able to travel as scheduled.

E. Number of Service Animals Per Passenger

We support the Department's proposal to limit passengers with disabilities to two service animals in the cabin of an aircraft. Some passengers with disabilities require the use of more than one service animal to effectively accommodate multiple disabilities or to mitigate a single disability. We believe that the overwhelming number of service animal users will be sufficiently accommodated under this proposal.

We believe, however, that if a passenger with a disability requires more than two service animals he or she should be able to request an exception to the limitation. In such cases, the carrier should be able to request 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.

F. Service Animal Restraints

Service animals must be under the control of their handler at all times. We support the Department's proposal to require that all 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 those cases, 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, however, the Department's proposal to allow air carriers to determine that an animal that is not properly restrained is not a service animal. If the Department is seeking harmony with the Department of Justice's ADA Title III regulations, then it should not pick and choose among provisions, particularly when no valid reason has been offered for doing so. Furthermore, the Department's own proposed definition of a service animal does not include any information about the handler's control of the animal. A service animal is a service animal if it was trained to do work or tasks for a person with a disability. The actions of the handler may not be indicative of the animal's individualized disability mitigation training. Like under the ADA, passengers with

disabilities should be given the opportunity to get their 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.

Proposed Section 382.74 provides guidance regarding how an air carrier can evaluate whether a service animal is a service animal. We believe that (b) and (c) should not be characterized as determination of whether or not an animal is a service animal but instead be incorporated into proposed Section 382.79, which addresses when an animal may be refused passage. The information in Section 382.74(a) is sufficient for a determination that an animal is a service animal.

We also believe that the term “service animal handler” should recognize third-party handlers. Again, it promotes harmony with the Department of Justice’s ADA Title III regulations. Furthermore, the Department’s own example of a child who would not require a safety assistant but who might need assistance with a service animal is the very reason why third-party handlers should be recognized.

G. Service Animal Documentation

For many people with disabilities, a service animal provides the critical assistance and support that allows them to be independent, active participants in their communities. The civil rights of people with disabilities in air travel that are guaranteed under the ACAA are vital and should not be unduly burdened. Decades of access without documentation have been provided for the vast majority of service animal users. Allowing air carriers to require all passengers with disabilities who use service animals to attest to their animal’s behavior and training and provide a health form to gain any access, burdens an individual’s civil rights without any justification that such burden is needed. People with disabilities who use service animals must have the ability to travel without additional barriers such as paperwork requirements, regardless of whether or not they possess such documentation.

Allowing airlines to require that passengers traveling with service animals complete an attestation form and an animal health form also does not harmonize the service animal requirements for the ACAA with the ADA. Instead the Department of Justice’s Title III 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 would mitigate any concern not present in other critical access areas, that would warrant such a burden being placed on each air travel passenger who uses a service animal. If the close proximity of passengers in air travel that has been the recent trend is the problem, then air carriers should address that problem themselves and not burden the civil rights of passengers with disabilities.

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 the 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 would be governed by Title II or Title III of the ADA as appropriate. The airport would not be able to require 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 some of the busiest airports are typically very crowded and certainly a service animal could bite someone. In this scenario, however, documentation would not be allowed. However, a passenger flying with a service animal on a nearly empty plane would need to provide documentation.

Instead, 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 health form requirement would create significant burden for passengers with disabilities due to the cost associated with asking a veterinarian to provide such attestations, potential time constraints when travel is immediate, or even the reluctance of a veterinarian to certify an animal's behavior since he or she would likely have no concrete basis on which to make such a judgement.

Animal health information is not 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 helpful in the event a passenger is bitten or otherwise harmed by an 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. Thus, carriers should not be able to refuse access to a service animal based solely on the information on the animal health form.

No documentation requirement is going to fully absolve air carriers from evaluating animal behavior at ticketing and the gate area. In the final rule, the Department should require recurrent training for all air carrier staff and contractors who interact with passengers regarding service animals. Such training should include how to interact with passengers who use service animals and how to observe animal behavior and to respond to any problems either observed or reported by passengers.

In the event that the Department decides to disregard these concerns and moves forward with documentation requirements, we believe that the forms should be uniform. Thus, we would

support standardized Department forms. This will ensure that passengers will not need to worry about completing a specific airline's form. It will also 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.

If air carriers wish to exercise their right to use the forms, then they should be required to have systems that would allow the forms to be attached to the passenger's frequent flier or other appropriate records so that they will not need to be completed more than once per year. Instead, the air carriers choosing to use this system should be required to develop a system that would allow the passenger at check-in to simply affirm that their forms are still correct during that year. Additionally, airlines should not be allowed to require passengers who travel with a service animal to show a photo identification of the service animal as individuals with self-trained service animals may not have the same types of identification as those who have program-trained animals. Such information could be voluntarily accepted, however, in lieu of the behavioral or animal health forms.

We also support prohibiting carriers 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. However, we oppose allowing carriers to require 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 passengers 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. If the Department elects to allow a one-hour check-in requirement, then we support the Department's proposal to require airlines to provide an employee who is fully trained and able to promptly receive the paperwork and complete all other check-in functions. This individual should also ensure that the passenger has any needed assistance in navigating the airport.

II. EMOTIONAL SUPPORT ANIMALS

We strongly oppose the Department's proposed weakening of the regulations that enforce the rights of people with mental health disabilities who rely on the use of emotional support animals. In order to accommodate the needs of passengers with mental health disabilities, air carriers must continue to permit people with disabilities to travel with their emotional support animals under the ACAA.

An emotional support animal is an animal whose presence mitigates the effects of a person's disability. Support animals are different from service animals in that they are not trained to perform a specific task or service for their owner. Instead, their company or untrained behaviors accommodate the person's disability by, for example, improving a person with a mental health disability's mood, decreasing their anxiety levels, or preventing or interrupting traumatic flashbacks—allowing the individual to function better in a wide variety of settings. The therapeutic benefit of emotional support animals has been demonstrated through clinical evidence¹ and is widely supported by mental health professionals as a preferred, and less invasive, medical intervention.

For many people with disabilities, the use of an emotional support animal may be their only option for effective mitigation of their mental health symptoms. For some individuals with psychiatric disabilities, medications are ineffective and few or no other clinical mental health interventions are available or successful for them. For others, medication may be moderately effective, but can be accompanied with side effects that make pharmaceutical intervention intolerable. Frequently, an emotional support animal is the primary intervention that enables a person with a psychiatric disability to succeed with daily activities—and sometimes, to stay alive.

It is crucial to allow people with disabilities to travel with their emotional support animals. Not only can they provide support during the flight itself—an experience that is frightening and triggering to many—but the presence of that animal at the individual's destination can be critical. People with disabilities, just like any other person, must be allowed to travel where they need to and where they want to. Without allowing that individual to be accompanied with their support animal, it unjustly and unlawfully denies them the accommodation that will enable their equal opportunity to visit their families, travel for work, seek needed health care, or otherwise engage with the world. Ending air carrier access for support animals will mean that these individuals would be forced to

¹ See, e.g., Helen Louise Brooks, *The power of support from companion animals for people living with mental health problems: a systematic review and narrative synthesis of the evidence*, 18 BMC Psychiatry, no. 31 (Feb. 5, 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5800290/>.

choose between travelling without their needed mental health intervention, or missing family events, work opportunities, or health care appointments, as other modes of transportation are not always an option depending on the urgency of the travel need.

While we recognize that the current emotional support animal rules have received negative press coverage and, in a few limited cases, have been taken advantage of, there are alternative measures that can be taken to ensure that the law is not abused, while still meeting the needs of people with mental health disabilities. For example, we would support the limitation of such animals to dogs, cats, and rabbits. Additionally, we support excluding any animal that shows disruptive or dangerous behavior, and we do not oppose requiring an individual to attest that their animal does not have such behaviors and has received any needed behavioral training. This attestation should be a standardized federal form, which alerts the passenger that knowingly making false statements is a federal crime. Any such attestation form must be fillable and accessible for people with visual impairments, and use language that is easily understood by people with cognitive or intellectual disabilities. Measures such as these are reasonable and will minimize abuse, while still effectuating an individual's civil rights.

We do, however, strongly oppose requiring support animals to travel in pet carriers; allowing air carriers to charge passengers for travelling with their support animal; and requiring veterinary health certificates for these animals.

First, we vehemently oppose requiring emotional support animals to be contained in pet carriers. *To be clear, this requirement would be a roundabout way of completely denying aircraft access to a majority of people with support animals.* The requirement would severely limit the size of the animal allowed in the aircraft. Support animals are overwhelmingly dogs, and most dogs cannot fit in a carrier under an aircraft seat. The dog would need to be under approximately 15lbs and short in stature. This would eliminate access to travel for people who rely on emotional support dogs who are not of a toy breed. Additionally, some people with disabilities rely on their animals for emotional support during the flight itself. Flying can be a fearful and triggering experience, especially for people with past traumas relating to air travel or their intended destination. An animal in a carrier does little good at comforting a person needing support in flight.

Second, we oppose the Department's proposal to allow an air carrier to decide whether or not to charge individuals when they fly with a support animal. It is highly likely that air carriers would take advantage of this flexibility and charge fees for support animals, treating them like a mere "pet," which can cost upwards of \$175 one-way to travel with. People with disabilities are disproportionately low income, and these fees would likely make it very difficult for people who need their support animal to travel for family emergencies or health care. It would also constitute an unlawful surcharge on an individual's accommodation need.

April 6, 2020

Page 10 of 10

Finally, we do not support allowing health certificate requirements for emotional support animals. The type of health information requested on the sample certificate would provide little to no evidence of the animal's behavior and, like airline fees, would impose additional costs on a group of individuals who already have disproportionately high healthcare expenses and are low income. Most veterinarians charge for health certificates—both in the form of the required annual exam, plus an additional fee for completion of the certification, which can cost over \$100. This requirement would construct yet another barrier to a person's needed accommodation. If there are concerns about the animal's vaccination history, then a simple vaccination record or county registration would suffice and be a much less costly requirement for a person with a disability.

DREDF thanks you for the opportunity to provide comment. Please do not hesitate to contact Carol Tyson, Government Affairs Liaison, at ctyson@dredf.org or (202) 878-9186, with any questions

Sincerely yours,



Susan Henderson
Executive Director