

Office/Contact: Office of Student Affairs

Source: Americans with Disabilities Act; Section 504 of the Rehabilitation Act; South Dakota Human Relations Act of 1972 (SDCL Ch. 20-13); University Policy 4:6

Link: http://www.ada.gov/2010_regs.htm; <https://www.dol.gov/agencies/oasam/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973>;
https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=20-13;
<https://www.sdstate.edu/policies/upload/Human-Rights-Complaints.pdf>

SOUTH DAKOTA STATE UNIVERSITY Policy and Procedure Manual

SUBJECT: Reasonable Accommodation Involving Animals

NUMBER: 3:6

1. Purpose

This policy sets forth the protocols for reasonable accommodations involving animals and applies to all University students, employees, applicants for employment or admission, and members of the public.

2. Definitions

- a. **Disability:** a physical or mental impairment that substantially limits one or more major life activities as defined by the Americans with Disabilities Act (“ADA”) at 42 U.S.C. Section 12102. Examples of major life activities include: self-care, performing manual tasks, walking, talking, hearing, seeing, breathing, working, and learning.
- b. **Reasonable Accommodation:** a modification or adjustment to a policy, procedure, position, or practice that would not fundamentally alter the same, including an auxiliary aid or service, necessary for a qualified person with a disability to enable the person to: 1) participate in educational programs and activities; 2) perform the essential functions of a job; 3) apply for admissions or apply and interview for employment; 4) access University facilities and events; or 5) have equal use and enjoyment of a University residence hall. Any accommodation that poses an undue hardship is not a reasonable accommodation
- c. **Service Animal:** For places of public accommodation under the ADA Title II, this term, as used in this policy, includes:
 - i. “[A]ny dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual, or other mental disability,” per 28 CFR § 35.104; and
 - ii. A “miniature horse [that] has been individually trained to do work or perform tasks for the benefit of the individual with a disability,” per 28 CFR § 35.136.
- d. **Animals in the Workplace:** Under the ADA Title I, “animals in the workplace” are excluded from the definition of service animals and are addressed through the reasonable

accommodation process.

- e. Other Animals: Animals that afford a qualified individual with a disability an equal opportunity to use and enjoy University residence halls in accordance with Section 504 as effectuated by 34 CFR Part 104.
- f. Pets: Animals kept for ordinary use and companionship and are not subject to this policy or the equal access and opportunity laws.

3. Policy

- a. The University will provide reasonable accommodations for qualified individuals with disabilities. Such accommodations may include the assistance of Service Animals trained to perform for the individual tasks related to the disability.
 - i. The University will comply with the law requiring equal opportunity and access to programs and services to all qualified individuals with disabilities in accordance with this policy.
 - ii. The A.V.P. for Human Resources and Coordinator for Disability Services, their successors, or designees are responsible for responding to requests under this policy, for maintaining appropriate documentation of the accommodation process, and for engaging in an interactive process to address appropriate reasonable accommodations in accordance with the status of the individual requesting the accommodation.
- b. Requests for reasonable accommodations will be processed in accordance with the South Dakota Human Relations Act of 1972, SDCL ch. 20-13, Titles I and II of the ADA, amendments thereto, and their implementing regulations, and Section 504 of the Rehabilitation Act, as applicable.
 - i. Service Animals shall be permitted in areas of the University campus where members of the public; participants in services, programs or activities; or visitors are allowed to go.
 - 1. When it is not obvious what service the Service Animal provides, University staff may ask only two questions:
 - a. Is the Service Animal a Service Animal required because of a disability?
 - b. What work or task has the Service Animal been trained to perform?
 - 2. No other questions are allowed. In particular, University staff may make no inquiries when it is obvious what service the Service Animal provides. Moreover, staff may not ask about the person's disability, require medical documentation, require a special identification card or training documentation for the Service Animal, or ask that the Service Animal demonstrate its ability to perform the work or task.

- ii. In all other circumstances, persons with disabilities may request the use of animals as reasonable accommodations in conjunction with applying for employment or program participation.
 - 1. Unless the disability and services provided by the animal are obvious or already known to the University, persons requesting an accommodation must provide documentation of the disability.
 - 2. Persons requesting accommodations must explain how the disability affects their major life activities and how these limitations would affect their ability to perform essential employment functions or to have an equally effective opportunity to participate in or benefit from a University program or job application process.
 - 3. Persons requesting accommodations should explain what accommodation would be preferred.
 - 4. The University will assess requests for accommodations on a case-by-case basis. For requests for accommodations involving Animals in the Workplace, the University may ask for permission to contact directly the medical providers of persons requesting accommodations to determine what accommodation may be reasonable and effective.
 - 5. The person requesting the accommodation and the University representative responsible for responding to the request, dependent upon the status of the individual requesting accommodation, are required to cooperate in attempting to reach an agreement on a reasonable accommodation.
- c. The Office of Disability Services and the Office of Human Resources are responsible as set forth herein for the interactive process of identifying and coordinating the reasonable accommodation process in accordance with the status of the individual requesting accommodation, and will make information available to students, employees, and members of the public concerning equal opportunity and access to University programs and services for qualified individuals with disabilities.
- d. The University is not responsible for the care or supervision of Service Animals, Animals in the Workplace, and Other Animals. Individuals with disabilities are responsible for the cost, care, and supervision of these animals including, but not limited to: 1) compliance with any laws pertaining to animal licensing, vaccination, and owner identification; 2) keeping the animal under control and taking effective action when it is out of control; and 3) feeding and walking the animal and disposing of waste in accordance with University protocols. At no time may an animal be left alone while on campus.
- e. Individuals with a disability should contact the Office of Disability Services or Office of Human Resources, as appropriate, to initiate a review for a reasonable accommodation in conformity with applicable law.
- f. Animals in the Workplace requests will be reviewed with an interactive process for a reasonable accommodation in accordance with Title I of the ADA.

- g. Other Animals trained to assist individuals with their documented disability are generally not allowed to accompany persons with disabilities in all public or common areas, but if certain criteria are met, may be allowed in University residential facilities. Requests for Other Animals will be processed to review that: i) the individual qualifies as a person with a disability; ii) that the Other Animal may be necessary to afford the person with a disability a reasonable accommodation under Section 504 of the Rehabilitation Act to use and enjoy the University residential facilities; and iii) that there is an identifiable relationship between the disability and the Other Animal. Individuals granted a reasonable accommodation for Other Animals will not be isolated or treated less favorably than other individuals, and requests will be reviewed on a case-by-case basis.
- h. The University will not charge a fee for animals allowed at the University under this policy, but may charge for damages caused by the animal.
- i. Individuals with disabilities who are accompanied by animals must comply with the same University rules regarding noise, safety, disruption, and cleanliness as people without disabilities.
- j. The University may, at its discretion, pose some restrictions on and exclude a Service Animal, Animal in the Workplace, or Other Animals, in certain instances. This includes, but is not limited to, when an animal poses a direct threat to the health or safety of others.
- k. The University may, at its discretion, specifically exclude Service Animals:
 - i. When the animal is out of control and the handler does not take effective action to control it;
 - ii. When the animal is not house broken; or
 - iii. (In the case of miniature horses) When the type, size, and weight of the miniature horse cannot be accommodated in, or the horse's presence compromises legitimate safety requirements necessary for the safe operation of, a given facility.

In this circumstance, the University shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the Service Animal on the premises.

- l. Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using Service Animals.
- m. An individual with a disability who may need a reasonable accommodation on account of another individual's authorized Service Animal, Animal in the Workplace, or Other Animal should contact the Office of Disability Services or Office of Human Resources, as appropriate, to initiate a review for reasonable accommodation in conformity with applicable law.
- n. The University will process allegations of discrimination resulting from the application of this policy in accordance with University Policy 4:6, Human Rights Complaints. To

resolve all other disputes arising out of this policy, the University will apply the grievance policies applicable to the status of the individual requester.

4. Procedures

- a. Students at the University who wish to request a reasonable accommodation under this policy should contact the Office of Disability Services for assistance. The Office of Disability Services will communicate with applicable instructors or University Housing and Residential Life staff, as lawful, regarding the reasonable accommodation under this policy.
- b. Employees at the University who wish to request a reasonable accommodation under this policy should contact the Office of Human Resources to document the disability and identify the reasonable accommodation.
- c. Applicants for employment who would like to request reasonable accommodations under this policy should contact the Office of Human Resources for assistance.
- d. Members of the general public who would like to request reasonable accommodations under this policy for access to and participation in University programs and activities should contact the hosting individual or department, who will work with the Office of Disability Services or the Office for Human Resources, as applicable, for assistance.
- e. Students or employees must notify the Office of Disability Services or the Office for Human Resources, as applicable, in writing, if the approved animal is no longer kept on campus. To replace an approved animal with another animal, students and employees must notify the Office of Disability Services or the Office for Human Resources, as applicable, about the new animal and provide proof of animal registration with the appropriate local government. Should this animal not comport to the type of animal declared necessary in the previously approved accommodation, the student or employee will be required to make a new accommodation request with the Office of Disability Services or the Office for Human Resources, as applicable, unless their disability and their disability-related need for the particular animal is readily apparent or already known to the applicable office.

5. Responsible Administrator

The Vice President for Student Affairs, or designee, is responsible for bi-annual and ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy.

SOURCE: Approved by President on 04/15/2016. Revised; Approved by President on 11/26/2019.