

DOCUMENTATION FOR ESA REQUESTS ON CAMPUS

USEFUL INFORMATION FOR THOSE CHARGED WITH DECISION-MAKING

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Foreword... And Some Important Caveats

The information contained in this packet is a compilation of materials that may be useful to folks working in the area of disability and higher education. It is specifically focused on the issues of students with disabilities in the college setting, and thus doesn't deal with employees, privately-owned housing, the Air Carriers Act, and so on. There may be utility for some of this information to other sectors, but you'll have to extrapolate on your own. We are discussing **ONLY** the issues that surround students with disabilities in higher education. There is discussion of Section 504, the ADA (Titles II and III), and the FHAA/HUD guidance regarding emotional support animals.

This packet doesn't purport to tell you everything you need to know about emotional support animal (ESA) issues. It deals with some specific concerns that seem to be arising regularly on campuses these days, and that have created particular problems for disability service providers and residence life folks. The information provided to you here focuses on the issues surrounding approval for ESAs. This has nothing directly to do with management of ESAs on campus, policies, rules, where they get to go, what happens when the student wants to take them out of the residence hall, or any of the rest. This is **JUST** about the process of documentation received and requested in conjunction with requests to have ESAs in residence, in campus housing.

A TOOL, NOT A WEAPON

It is **NOT** the intent of this packet of information, or the suggested course of action, to cut down or limit the number of students who get approved for an ESA in their campus residence. While the idea of ESAs in the dorm is a new (and sometimes, not very comfortable) concept for those of us in higher education, it doesn't mean that the idea, itself, is just trendy and will, or should, go away soon. The positive effects of pet therapy have been known for many years. This is a logical extension of that idea.

If you hope that by tightening up on the documentation of ESAs, *you'll be able to say "no" more easily or more often* to requests for ESAs, then you are approaching all this with the **WRONG** intent. Instead, I would suggest that if you tighten up on the documentation of ESAs, *you may have to say "no" more frequently*. There is no suggestion here that ESAs are inappropriate to the college campus, or that all students who request an ESA are trying to scam the system. The purpose of ESAs is not always well understood by the "lay" public, and they may be requesting an ESA for the wrong reason. Students may also believe that the bogus certification/letters that can be had for a price (and that are the targets of this packet) are legitimate and appropriate. They don't know the difference – we do! Don't fall into the trap of being skeptical of the student, even if you are skeptical of the paperwork they submit.

Even as this tool is made available for your use, we recognize that there is a very real chance that it could be misused. PLEASE DON'T DO THAT!

A WORD OF CAUTION...

I am NOT an attorney. This is NOT legal advice.

Following the path suggested in this packet is not for the faint of heart. * If your administration or legal counsel ask, "How do we know that the student won't file a complaint if we do this?" the answer is that you DON'T know that -- and if that is what worries them most, you should just accept what is provided and move on.

*If your administration or legal counsel ask, "on what basis are we saying that this paperwork is bogus," tell them that you are NOT saying that the paperwork is bogus, and you are NOT saying that the service provider is a charlatan. You are saying that the paperwork is not adequate for your purpose in evaluating the request for an ESA. (Wouldn't you ask for more/different info if you had requested verification of a learning disability and you got a prescription pad diagnosis from a GP?)

*If your administration and legal counsel don't want to take any chances, then DON'T DO IT! You cannot get in any trouble, from a legal prospective, for saying "yes" (no matter how ridiculous the claim). There is nothing to be ashamed of if the institution chooses to take the path of least resistance and tells you to "just say yes." Rather, it is very brave of the institution to be willing to say, "Stop!"

Is everyone clear on that? Then let's move on...

YOUR MISSION, SHOULD YOU CHOOSE TO ACCEPT IT...(Part 1)

HOW TO RESEARCH THE DOCUMENTATION YOU RECEIVE

The packet of materials you are reviewing (this document, the ESA Form, and the ESA Watch List) were created in July, 2015, because the problem of fake, inappropriate, or inadequate documentation in support of requests for ESAs had increased exponentially during the previous school year. These resources were compiled in an attempt to help disability service providers at the college level in managing this unfortunate turn of events. In its earliest formulation, the most important part of the packet was the ESA Watch List, which provided extensive information on questionable websites that offered “ESA letters,” or certification cards, or accompanying paraphernalia to anyone who would pay their price.

Over the last three years, a series of changes have been made to these materials and the focus has shifted, by necessity, from the ESA Watch List to the process of gathering information in support of ESAs (the ESA Form) and to assessing documentation received. It isn't that the problem with these letters-for-a-price scams has gone away. Rather, the problem is worse. The letters folks are receiving today (letters that often still begin by contact with a bogus website) are more sophisticated. Our approach to ferreting out the truth and establishing the reliability of the information presented must be more sophisticated, as well.

I have (unfortunately!) had considerable experience in checking out letters received by disability service providers that were thought to be suspect. What follows below is a list of the steps I usually take in researching the credibility of such documentation. It is hoped that service providers may use some of these ideas in researching questionable documentation for themselves.

1) First, I check the ESA Watch List ((a newly-updated version of the Watch List is provided with this document). If the provider's name/website is NOT included on the list, it doesn't mean that the paperwork isn't bogus, but if it IS included on the list you can pursue what to do about it directly, without worrying so much about whether you have perceived things correctly.

2) Consider WHY the letter seemed suspect. Does it read like three other letters from the same provider you have received in recent weeks? Is the provider in another state? Did they fill out the ESA form with pretty vague information? One common tip off is a letter with boilerplate language about the legal obligation to accommodate ESAs, along with articles and websites to back 'em up – but very little about THIS STUDENT or why they need an ESA. Again, there is no specific answer you are looking for, but the “trigger” that sent you looking may give you some idea of how to prioritize your search.

3) Look at what state the service provider is from and what state the student is from. If the documentation comes from someone local to YOUR state, or the student's home state, you haven't got anything solid. But if the documentation comes from (for example) Illinois, you are in Virginia, and the student is from New Jersey – yeah. I'm gonna be pretty suspicious. If THIS becomes an issue (that is, if you find this kind of discrepancy), your next stop should be to check out whether there are telemedicine laws in your state – i.e., does the state you are in have prohibitions against

the practice of medicine (and, thus, prescribing) across state lines? An excellent resources can be found here - <https://www.ebglaw.com/content/uploads/2017/10/EPSTEIN-BECKER-GREEN-2017-APPENDIX-50-STATE-TELEMENTAL-HEALTH-SURVEY.pdf> What you are looking for is information that suggests that the state has stated rules against medical service providers from other states treating patients in your state unless they are licensed in your state, or rules regarding the kind of relationship that must be established to practice telehealth, and more. I can't give you specific rules or wording for what to look for – you just have to look at your state's rules and see what, if anything, might pertain. Just know that, generally, when there is no logical geographic link between the student and the service provider, you are likely looking at a letter that was generated as a result of an online contact, without any direct or extensive interaction.

4) Now go after information about the service provider who wrote the letter. I usually start out by Googling the service provider's name, "ESA letter" and maybe their location (e.g., Jane Jarrow ESA letter Ohio). I have to warn you that once you start Googling for things with "ESA" in the search criteria, you will find your future online surfing populated with dozens of advertisements for ESA letters (it is annoying, but it can be amusing, as well!). If your search takes you to a site that screams "yep – they are selling documentation for the right price" then you have your answer. Look for things like what they promise, what kind of evaluation they do, how fast they say you can get a letter (anyone who promises the letter faster if you send 'em an extra \$50 is a charlatan!), and so on. Look for obvious clues on the letter itself, including exceptionally poor grammar or typographical errors, template language that they failed to personalize for the student in question (e.g., "I have evaluated *insert name* and found *him/her* to have a mental health problem"). Check out their email address (one provider out in California uses the email address of esadoctor@gmail.com). Remember, at this point you are gathering evidence. There is no one single piece that tips this into the legal/not legal pile.

5) When researching the service provider, don't be afraid to check out their credentials, as well as what they say about the student/ESA. Do they provide a professional license number? You can check online to see if their license is current and if it is appropriate to the documentation they are providing (a recent spate of letters seen on campuses nationwide have been generated by a physician who is duly licensed – as a radiologist!). If the service provider is working for an agency or business (as shown in their letterhead), you may want to check out that entity, as well. Don't just look at what it says on their website. REALLY look at the website. For example, there is an agency in Oklahoma that has issued a number of questionable letters in support of ESA requests. When you visit their very professional-looking website, there is a link titled "Our Facility." When you visit that link, you find four pictures of Reception Area I, Reception Area II, Waiting Room I, and Waiting Room II. When you look more closely, you realize that all four pictures are of the same room, taken from different corners. This is a storefront operation with a single room for patients who are waiting. (I assume they do therapy some place back in the storage area!)

While you are at it, take a look at the address given on the letterhead. If there is no street address – just a website – you have a big clue. If there IS an address, it may be worth checking it out (you can do a Google search for a satellite image of the address, or you can do a "reverse address" search for the given address. This step has turned up several instances of fake addresses or UPS drop sites. Moreover, the use of "virtual addresses" seems to be on the rise. Virtual addresses are legitimate street addresses and office numbers (that is, the address/office DOES exist) that are

occupied by a company who rents out permission to use their address for folks who do business solely online. It makes it look as though they have a physical address and place of business when they do not.

6) You are only going to go through these steps (1-5) when you have reason to question the documentation – and that won't be all the time. Sometimes you will get documentation from a legitimate provider that STILL needs to be examined to see (a) if it establishes that this is really a student with a disability – a SUBSTANTIAL limitation, and (b) if there is a strong enough link between the disability and the proposed support provided by the animal to warrant approval. Does the professional speak specifically to how severe the student's disability is, and what symptoms may be alleviated by the presence of the animal? Is this an animal specifically prescribed by THIS professional for this purpose? Is there a clear connection between the student's symptoms and what the animal can do? This is when the ESA Form, discussed below, may be useful in gathering and organizing information for your consideration. If you believe the paperwork is legitimate, you start with this step. If you believe the paperwork is bogus, you start with Steps 1-5...and then you STILL do this step.

If the student's request survives all those steps, then it is probably time to start making arrangements to welcome Fido (let's hope it's a dog! GRIN) to campus.

MORE ABOUT THE ESA FORM:

The form to be sent out to the mental health provider, referred to above, appears here (following the explanation), but is ALSO being sent as a separate attachment to this document. That has been done to make it easier for you to print or post the form for your own use. (The attachment was left in WORD format, rather than pdf, so that you could change and adapt it more easily, as well!) Here is a little more information about the intent/use of the form that may be helpful:

1) The idea of using this form is to help you gather reliable information that you can legitimately ask for (that is, doesn't violate FHA rules), that can help you in making a decision as to whether or not to approve an ESA request. **IT WAS NOT CREATED WITH THE INTENT OF THROWING UP BARRIERS TO THE APPROVAL OF AN ESA.** If you are provided all of the information requested here through paperwork volunteered by the student and/or through your interview with the student, ***don't ask them to have this form filled out*** "just to be consistent" or because you are hoping that you'll get answers that you can pick apart as an excuse to say "no." There are students who have legitimate need for an ESA, used in exactly the way the FHA intended when they created the category. *Remember, this is meant to be used a tool, not a weapon!!!*

2) Note this sentence in the paragraph explaining the purpose of the form: "Generally we accept documentation from providers in the State of (wherever you are) or the student's home state." It seems like an innocuous statement, but it could be VERY big. Most of the bogus letters for ESAs come from providers contacted over the internet, from someone very far away. You CAN say to someone who has brought such "over-the-net" documentation that you do not find their documentation to be from "a reliable source" because it is not legal to treat/prescribe across state lines (that is true in about 30 states). But this is a lot cleaner. Instead of having to reject the documentation they bring you from a bogus site, you can avoid having to evaluate (and reject)

such documentation by simply saying, “Generally, it should come from someone in this state or from your home state.” If they ask why, the answer is simple. “We want to make sure that the information is provided by someone who has seen you and worked with you over time.” **Update: August, 2018:** Another sentence was added to this introductory section: “*Letters purchased from the internet for a set price rarely provide the information necessary to support an ESA request.*” A more complete statement is recommended for your policies regarding the issue of purchased letters. But for this form, the intent is to put the service provider on notice that you will be skeptical of form letters. Note that the reference is to purchased **letters**. The bogus sites generally state that the price charged is for the letter, not the evaluation that may or may not be done to receive the letter.

3) While the DOJ limits the questions that can be asked when trying to verify the status of a service dog, the FHA puts no limits on the questions you can ask regarding requests for an ESA. **HOWEVER**, it is understood that the information you ask for may not be overly burdensome or intrusive. You should only ask the information that is relevant to your decision as to whether or not this is a person with a mental health disability who needs the ESA to insure that they have full benefit or enjoyment of the residence setting (in other words, that there is a logical nexus between the presence of the ESA and the individual’s disability/symptoms). The FHA says that you can ask for verification from a “reliable source”, and it uses the same definition of a person with a disability that is used in 504/ADA – someone with a “physical or mental impairment that substantially limits one or more major life activities.”

The form originally asked, “How long have you been working with the student regarding this mental health diagnosis?” That question has been replaced with this: “*When did you first meet with the student regarding this mental health diagnosis?*” The intent is to determine whether the verifying professional has a longterm (and ongoing?) relationship with the student. The response to the original question was often just a date – a date within the last week or two. We knew that to mean that this was likely to be bogus documentation purchased off the internet, but it was awkward to question that issue directly. The new wording suggested should make it easier to challenge some of the bogus documentation. You are casually asking when they first SAW the student. If the paperwork was purchased off the internet, and the professional filling it out doesn’t note that they have not physically seen the student, they have lied on the form and you can call them on it. If they DO admit that they have never actually met the student, you are in a better position to question the appropriateness of the information provided regarding diagnosis and recommendations.

4) Because the FHA uses the same definition of disability used in the ADA, questions about whether the condition is substantially limiting are fair game, so long as you don’t start quibbling with any statement to that effect given by a legitimate service provider (more about who IS and ISN’T legitimate will come later!). Experience suggests that some physicians are willing to write a letter saying, “Johnny is depressed and the dog would help”, but will balk at being asked to put their signature and license number on something that says, “Johnny is substantially limited by his depression.” For those of us who put this form together, it’s OK if the request falls apart because the professional isn’t ready to say that the student is significantly limited if he really isn’t. If you are uncomfortable with focusing on that distinction, then you may want to review/massage the first couple of questions on the form that ask about the student’s disability.

5) The three questions under “Information About the Proposed ESA” are not meant to be definitive in your decision-making one way or another. That is, there isn’t a right or wrong answer to these questions that will say, “approve/don’t approve” on the basis of that answer. If the animal has been prescribed BY this professional, it certainly lends credence to the idea that the professional believes the ESA is important for this student. But the third question (re: whether an ESA has helped the student in the past) is looking for just the opposite – some indication that there is supporting evidence that this will work for the student (rather than it just being prescribed now). Either piece of information would be helpful to have if you are trying to figure out how important the ESA is for the student. *In other words, you are looking for information that will SUPPORT the student’s request for the ESA, not that will disprove the need.*

The statement in parentheses (*Please note that there are some restrictions on the kind of animal that can be approved for the residence hall...snip*) was added in January, 2018, along with some other minor wording revisions. The question about symptoms and about evidence that the ESA might be helpful was altered to inquire about the importance of **an** ESA (a generic, single ESA) rather than **the** ESA named on the form as given over to them by the student.

6) The last two questions are really there to push the provider not to make the recommendation for an ESA if it isn’t really appropriate. If the answer to the question of “how significant is the ESA’s presence” is, “this could make a significant difference for the student” I would accept that with no question. If, on the other hand, the answer is “Jill is really anxious about being away from home for the first time and I think she’d be happier if she had her pussycat with her,” then I think you have legitimate cause to question whether there is a logical nexus between animal and disability that makes it NECESSARY to have the ESA in order to have full benefit or enjoyment of the facility.

Two more recent additions are suggested for the form provided here. This sentence has been added after the statement suggesting you may need more information: *“The named student has signed this form (below) indicating written permission to share additional information with us in support of the request.”* At the bottom of the form, a release statement has been added for the student to sign:

STUDENT (please sign this form before providing it to your mental health provider to complete):
By signing below, I consent to allowing my mental health provider to share any information relevant to my need for an ESA as an accommodation, as shown on this form, with (*personnel from the DSS office*) for the next 60 days.

Signature

Date

Recently, folks have reported that bogus providers are citing HIPAA privacy laws as a reason for ducking requests for further information. Not only do these two additions remove that excuse, but the fact that the student must sign the form along with the disability service provider makes it just a little more difficult to use an internet provider and an online questionnaire as evidence of need.

REQUEST FOR INFORMATION Re: Emotional Support Animal

Student's Name: _____

Re: Proposed ESA:

Name: _____

Type of animal: _____

Age of animal: _____

The above-named student has indicated that you are the (physician, psychiatrist, mental health worker) who has suggested that having an Emotional Support Animal (ESA) in the residence hall will be helpful in alleviating one or more of the identified symptoms or effects of the student's disability. Generally, we accept documentation from providers in the State of ---- or the student's home state. Letters purchased from the internet for a set price rarely provide the information necessary to support an ESA request. So that we may better evaluate the request for this accommodation, please answer the following questions:

Information About the Student's Disability

(A person with a disability is defined as someone who has "a physical or mental impairment that substantially limits one or more major life activities.")

What is the nature of the student's mental health impairment (that is, how is the student substantially limited?)

Does the student require ongoing treatment?

When did you first meet with the student regarding this mental health diagnosis?

Information About the Proposed ESA

(Please note that there are some restrictions on the kind of animal that can be approved for the residence hall; it is possible the student may be approved for an ESA, based on the information you provide here, but may not be allowed to bring the specific animal named.)

Is the animal named here one that you specifically prescribed as part of treatment for the student, or is it a pet that you believe will have a beneficial effect for the student while in residence on campus?

What symptoms will be reduced by having an ESA?

Is there evidence that an ESA has helped this student in the past or currently?

Importance of ESA to Student's Well-Being

In your opinion, how important is it for the student's well-being that an ESA be in residence on campus? What consequences, in terms of disability symptomology, may result if the accommodation is not approved?

Have you discussed the responsibilities associated with properly caring for an animal while engaged in typical college activities and residing in campus housing? Do you believe those responsibilities might exacerbate the student's symptoms in any way? (If you have not had this conversation with the student, we will discuss with the student at a later date.)

Thank you for taking the time to complete this form. If we need additional information, we may contact you at a later date. The named student has signed this form (below) indicating written permission to share additional information with us in support of the request.

We recognize that having an ESA in the residence hall can be a real benefit for someone with a significant mental health disorder, but the practical limitations of our housing arrangements make it necessary to carefully consider the impact of the request for an ESA on both the student and the campus community.

Please provide contact information, sign and date this questionnaire (below), and return it to (institutional contact info).

Contact information:

Address:

Telephone:

FAX and/or Email address:

Professional Signature:

License #:

Date:

STUDENT (please sign this form before providing it to your mental health provider to complete):
By signing below, I consent to allowing my mental health provider to share any information relevant to my need for an ESA as an accommodation, as shown on this form, with *(personnel from the DSS office)* for the next 60 days.

Signature

Date

*(This form has been developed as a class exercise, over several offerings of the **DAIS** Professional Development class entitled "Who Let the Dogs Out...IN???" Permission is freely granted to use or adapt the form and the questions for use on your campus.)*

YOUR MISSION, SHOULD YOU CHOOSE TO ACCEPT IT...(Part 2)

The most difficult part of revising this document was deciding what could be said about the **ESA Watch List**, and how best to update the information here. The **ESA Watch List** has been left in WORD format because the hope is that it will be easier to run a search for critical information if it is in WORD. In other words, you can run a search for a given phrase, a phone number, name, url, etc., in relation to paperwork provided to you in support of an ESA request.

The original Watch List was created in July, 2015. I was running the class entitled “Who Let the Dogs Out...**In!?!**” and noted that I was hearing a new level of frustration (desperation?) in the posts from members of the class as they grappled with issues of service animals and emotional support animals (ESAs) on campus. I came to the conclusion that, whether we liked it or wanted to admit it or not, there were escalating problems in this area. Not problems of our making, but problems left for us to help resolve. “Someone ought to do something about that!”

Laurel Cunningham, from Texas Christian University, took me seriously when I suggested we start a list of some of the bogus sites that issue ESA documentation letters and make that list available to DSS and Res Life staff. Laurel put in hours of work, and the results were impressive. She provided detailed information on 23 different entities (some individuals, most “organizations” with websites selling animal-related papers and/or paraphernalia). Laurel’s original work is still included in the **ESA Watch List** being offered to you now. Some of it may be outdated – these bogus websites tend to be transient, and often change their url’s or slightly alter their names slightly to position themselves for better sales. You may find that if you dig a little deeper, the website you are looking for but don’t see on the list actually morphed from something that was on the list in the summer of 2015. For example, two of the larger entities in 2015 have since COMBINED their “services” under the title of the United States Dog Registry (usdogregistry.org). The larger problem, however, is that in the intervening time, the folks running these shady sites have gotten more sophisticated. Many of the websites have begun “franchising” the writing of ESA letters (the name and credentials of the professional writing the letter don’t appear on the list, but they were reached by applying for certification through one of the bogus websites that IS on the list). You cannot tell, from looking at the letter, which of the questionable websites the student contacted that led to the letter you are holding. (Case-in-point: within a one-month period in July, 2018, letters were received from a questionable service provider in Princeville, HI. The letters were received at three campuses in Missouri, one in Oklahoma, one in Montana, one in Pennsylvania, and one in Florida. The odds of students that geographically disbursed casually being in contact with a service provider in Hawaii are next to nil. They are being referred to the provider from a website – we just don’t know WHICH website!)

We will try to keep updating the **ESA Watch List** periodically, and you are invited to send sites that you stumble across that you think should be reviewed and/or included on the list. But the fact that the name/website does not appear on the **ESA Watch List** should not discourage you from looking further.

WHAT THE ESA WATCH LIST TELLS YOU

Please keep in mind that this list was created simply as an aid for disability service providers and Res Life folks to use. It is not “official” in any way, and there may be times when the information provided is incomplete – and over time some may become outdated. All of this information was pulled from research done on the internet about these websites/providers, so it is publicly available information.

For each of the websites identified in the original listing, the following elements are noted (if available):

NAME – the name of the website URL – the website address

ASSESSMENT – if there is an “assessment” of someone to determine their status as a person with a disability in need of an ESA, the form of that assessment is noted

LETTERS – this tells you whether the site is offering to supply letters that can be used to support a request for an ESA. Note that there is often reference to “housing” and “travel”. The Air Carriers Act also recognizes ESAs, so many of these sites will provide documentation that someone can use to get their Fido on an airplane with them – free of charge. (If the site is also offering letters or certification for service animals, that may be noted as well.)

COST – How much is charged for services (letters, “assessment”)

LOCATION/STATE – this may be an important piece to note in being able to say “no” to the documentation received from the site. You’ll need to explore both the issues of practicing medicine across state lines and the telehealth laws in your state. Please note, too, the suggested wording on the ESA documentation form that speaks to the location of the service provider

STORE: Some of these sites sell vests, certification cards, and other merchandise related to ESAs.

MONEY-BACK GUARANTEE: Self-explanatory; the information was included here because it seems to speak to the less-than-professional nature of the services being provided. (When was the last time your doctor offered you a money-back guarantee that the meds prescribed would fix you right up?!?)

PROVIDER QUALIFICATIONS: Self-explanatory

LETTER LONGEVITY: Self-explanatory PHONE: Self-explanatory

NOTES: If there was anything that jumped out as odd, unusual, particularly questionable (or particularly offensive!), you may find it noted here.

WHAT TO SAY WHEN YOU FIND THE PROVIDER ON THIS LIST

A student presents a letter of support for the ESA request that strikes you as “iffy.” You check it out with the *ESA Watch List* and find that, indeed, the letter was issued by one of the sites or providers noted there. Now what do you do?

You may want to go back and read the steps included earlier in this packet regarding how to review ESA letters. If you find that the documentation supplied to you comes from one of these sites, *it*

means there is a good chance that the documentation is bogus. It does **not** mean that the student is trying to scam the system. It does **not** mean that the student doesn't need or shouldn't have an ESA. It simply means that the documentation they are providing is not from a "reliable source."

If you choose to take a stand (with full knowledge and backing from your administration), then if you find the provider's name on the *ESA Watch List*, it would be appropriate to say something along the lines of,

"This documentation will not satisfy our need for information to evaluate in support of your request. We need to have some further questions answered by your mental health provider. Here is the form we use to gather that information. Why don't you ask your doctor or counselor to fill this out as much as possible and return it to us so that we can review your request for this ESA." (*Then you hand 'em the ESA form found earlier in this packet.*)

You are NOT saying that the service provider is a fraud (even if we believe that!). And you are not accusing the student of anything because they presented you information from this iffy source. You are simply saying, "This doesn't give us the information we need to give proper attention to your request."

GOOD LUCK!

APPENDIX

Excerpts from *The Last Word*

The Last Word is a once-a-week “thought piece” distributed on an electronic mailing list for disability service providers and others interested in issues regarding students with disabilities in higher education. While the focus of the posts varies greatly from week to week, over the last three years there have been a significant number of posts that dealt with issues surrounding ESAs. What follows are some excerpts from some of those posts that deal with bogus documentation. (If you are not receiving *The Last Word* and would like to be included in the weekly email postings, please contact JaneJarrow@aol.com)

July 10, 2015

TAKING A STAND ON ESA's

... I have come to the conclusion that it is time we spoke up and said, “Enough!”

Last Fall, an article appeared in the *New Yorker* that pretty well summed up the stupidity of the issues we are dealing with, and the confusion of the general public that is inadvertently making the whole thing worse. It is a long article. It is worth taking the time to read it, in part because you can't help but read it and become incensed. And that's good. It's time we got mad. (NOTE: Read it later; I'll tell you what you need to know now!)

<http://www.newyorker.com/magazine/2014/10/20/pets-allowed>

The two sentences that were enough to tell me it is time to stake a stand appear early in the piece:

No government agency keeps track of such figures, but in 2011 the National Service Animal Registry, a commercial enterprise that sells certificates, vests, and badges for helper animals, signed up twenty-four hundred emotional-support animals. Last year, it registered eleven thousand.

I say, again, “ENOUGH!” From what I am hearing from all of you, this explosion in numbers is happening on campuses across the country. I believe that part of the interest by the animal-loving public for having ESAs with them stems from a societal shift/phenomenon – we all love our pets and society, in general, is less stuffy about the idea of animals being out and about than it used to be. Maybe there WILL come a time when institutions make a conscious choice to become pet friendly and don't mind one way or another if folks have their animals with them. Maybe you believe that would be a good idea. It doesn't matter. That is NOT the case now – and people who scam the system to get something now that MIGHT be appropriate later should be held accountable in the same way that people who engage in clearly illegal or inappropriate actions should be held accountable.

(snip)

(Regarding the creation of the first ESA Watch List)

I was anxious to see it – and afraid to look! But having this kind of tool out there, widely disseminated, is one way of fighting the abuse. As an aside, I think someone SHOULD take these sites on legally and publicly and get them shut down. But that isn't what I am urging you to do just now. If you choose to get involved in the broader fight, the rest of us will applaud your efforts and thank you. But while we are waiting for someone to take action on a larger scale, I think it is time for us to take action on an institutional level. We can't control what goes on in the world, but we CAN (hopefully) control what happens on our campuses. So let's do it!

Remember... you cannot put a stop to the abuse if the powers-that-be aren't prepared to back you. You need to make sure that whatever plan of action you choose to adopt has been approved by the powers-that-be and they are prepared to defend those decisions. It is time that you talked to the folks from Res Life and, TOGETHER, decide what you are wanting and willing to do and how far you are ready to go. Then you need to go, TOGETHER, to those powers-that-be on campus and make your case. And what should that case be?

Last week, I gave you MY reading on a litmus test to use in determining whether the tasks that are offered as service animal tasks really ARE service animal tasks. Are they tasks that promote independence, safety, or dignity? I tried to figure out if there was a similar way of sorting out the real from the – made up? – when it comes to ESAs, and I have come to the conclusion that, in this case, we need to look at the documentation, not at the animal. Last Friday, I said,

As an aside, rejecting the documentation as unreliable is an uncomfortable thought for most DSS providers. We have been schooled, over time, to believe that it is not in our purview to question the legitimate professional determinations of disability (in other words, we don't get to look at the same documentation the psychologist looked at and come to a different conclusion as to whether or not the student is LD). This is NOT the same situation. We are not questioning legitimate professional determinations. We are questioning illegitimate, unprofessional statements. There is a difference!

I think that may be the key. *It is time to question the documentation we receive.* Much as it pains us, I think we have to acknowledge that there are not just a few folks out there producing bogus paperwork while the rest are telling us true. The MAJORITY of the paperwork and requests that folks seem to be getting for ESAs in the dorm is inappropriate. In some cases, the people producing the paperwork are charlatans. In some cases, legitimate practitioners are lulled into producing paperwork for a student because the student wants it, and they don't understand what harm it would do to provide it. While their actions are not unethical, they are still WRONG. (NOTE: We have to be careful **NOT** to reject them all – because some of those requests ARE real and the need IS real).

(snip)

It seems ironic that, as the field moves away from asking for more third party documentation for establishing that a student has a disability under the ADA (and I am a big believer in the new AHEAD guidance on documentation), I should be the one that is leading the charge for MORE third party documentation, and more stringent assessment of the paperwork presented, regarding ESAs. Remember, though, that this isn't about documentation about the student's disability under the

ADA. This is about the legitimacy of accommodation requests under the FHA. Beyond that, I refuse to apologize.

It is time to take a stand.

Janie

My Dad used to have a sign over his desk with a picture of a very irritated-looking vulture on it. The sign read:

Patience, my ass. I'm going out and kill something.

August 19, 2016

Thinking for Yourself (and Knowing What to Think!)

... I don't think what I am reading on the lists is backlash to the idea of having ESAs on campus. I honestly believe it results from ongoing confusion about all this. But that confusion seems to have shifted the way we look at this issue, and the way we draft our responses. It's kind of the difference between a multiple choice test and an essay test. In a multiple choice test, your objective is to choose the right answer from among the possible options provided. In an essay test, you begin by considering ALL the information available and weaving together a narrative that justifies your (right) answer.

I have had at least one contact a week, since returning from the AHEAD conference, from a service provider who says, "I think I am looking at bogus paperwork for an ESA. How do I check that out, and what should I do about it?" In each case, the DSS provider was right. The paperwork was easily shown to be bogus. (I am adding a new lesson to the ESA class on how to research that for yourself!) But what to do about it? That's something else. In all but one case, the student who brought the paperwork was a returning student. That student already had a diagnosis on file of a mental health disability. Indeed, part of the concern expressed by the service provider was, "the student has been receiving accommodations for the mental health disorder since they got here, and they have been living in the dorm with no problem. Why do they suddenly need an ESA?" ***And in EACH case***, somewhere within the conversation, there was concern expressed that if they accepted this bogus paperwork, they would be setting a precedent for accepting bogus paperwork from anyone and everyone.

Hold that thought, while I tell you about a different set of conversations I have had this week. I have been having separate, lively discussions with two very knowledgeable, very savvy attorneys (nice guys, honest!) who work in the higher education arena. Those conversations have reminded me that we may work in the same area, but we are from different worlds. Their reality is not MY reality (and, apparently, *vice versa!*).

When the attorneys are confronted with a decision to be made or a course of action to be chosen, they look at all the possibilities that could result from one decision over another. Since they are schooled to be "risk averse" in their actions, once they have determined what the consequences

could be, they are inclined to follow the path with the least likelihood of triggering legal action. They examine existing precedents and shy away from setting up the possibility of a negative (legal) outcome, even if they are dealing with the least likely scenario. “Better to be safe than sorry?” The one annoying piece of this that crept into both conversations was the attorneys’ recognition that there were no immediately applicable precedents, so they drew their precedents from something similar that MIGHT be applied to the case at hand.

When I looked at those same scenarios (from my perspective as a DSS professional), I was inclined to look at the *likelihood* of negative consequences, based on past history in the practice of DSS in higher education. Rather than avoiding a course of action because it MIGHT create a problem, I looked to see whether the possibility of a problem in the future was worth risking the certainty of what I felt was the right thing to do in this instance.

The lawyers look at past precedents to guide their decisions (and, I would suggest, to limit their options). As a DSS provider, I look at existing precedents as important information to have when making decisions, because they suggest what options might be available and what I would need to do (how to justify) if I don’t follow the precedent. In the end, it comes down to taking action for this student because of what has happened to/with others (the attorneys), versus taking action for this student because of the circumstances for this student (DSS providers). Does the phrase “case-by-case” ring any bells?

Let’s circle back to the discussion of ESAs and bogus documentation. I have no problem with being honest with a student and saying (politely, of course), “this documentation is not adequate or appropriate in establishing the need for an ESA.” It worries me, though, when it seems that statement is rarely followed by, “If you want to establish the need for an ESA, here is what I will need you to bring me instead.” Remember, in the scenarios presented to me over the last month, the student’s diagnosis as someone with a mental health disability was already in hand. That doesn’t make the bogus paperwork any more legitimate, but it seems to me that it SHOULD shift the conversation.

If you are talking to a student that has just been diagnosed as having a mental health disorder by filling out an online questionnaire, and sending in \$69.95 for their letter, you SHOULD say “no.” And I probably wouldn’t hesitate to throw in a little polite-but-firm education about the true purpose of an ESA and the idea that they are only allowed for someone who has a *significant* mental health problem. If you are talking to a student who has been on campus, struggling, for more than a year, who is receiving extended time, quiet proctored settings, and other accommodations in response to their established significant disability, who filled out the SAME online questionnaire and sent the SAME \$69.95 for their letter, I think you should say, “Not on the basis of this. Here’s what you need to do, instead.” And what is the difference? A case-by-case review of the circumstances.

But... but... if you eventually approve an ESA for a student who brought you faulty paperwork, aren’t you setting a precedent for needing to work with and eventually approve an ESA for every student, no matter how bogus the claim AND the paperwork? Way back in 2011, right after the UN-Kearney case first broke and was reported, Scott Lissner gave a great quote in an article for *Inside Higher Education*:

"I understand the concern, but it is never legitimate to make an accommodation decision based on what other people will try to do. In terms of determining your accommodation, the other 10 million people in the universe are irrelevant."

Are the attorneys wrong? Do legal precedents have no place in our consideration of disability accommodation decisions? Of course they have a place. It is important for the DSS provider to know and understand what has gone before. But as a DSS provider, I am more concerned with WHY the precedent came about than with the yeah/nay decision it encompasses. KNOWING those legal precedents and acknowledged "good practice" parameters is vital in being prepared to make case-by-case decisions (which is WHY you should consider taking that Beginner's course!!!).

In the end, though, each decision we make should be case-by-case, considering the WHOLE of the circumstances. Does each decision either set its own precedent, or ignore all precedents? Not at all. When fair-minded individuals consider all the circumstances and make a "good faith" determination of what should happen, the only precedent that is established is that the next request will receive the same fair-minded, good faith consideration – NOT that the decision will be the same, but that the process of deciding will be the same. That is a precedent we should be able to live with!

Janie

It is a maxim among these lawyers, that whatever hath been done before, may legally be done again: and therefore they take special care to record all the decisions formerly made against common justice and the general reason of mankind.

Jonathan Swift

I have an almost complete disregard of precedent, and a faith in the possibility of something better. It irritates me to be told how things have always been done. I defy the tyranny of precedent. I go for anything new that might improve the past.

Clara Barton

August 18, 2017

Apparently, Enough is NOT Enough

My apologies. I am guessing that you are as tired of hearing about, talking about, THINKING about ESAs as I am. But I am going to talk about it some more here, anyway! The endless discussion of ESA/service animal issues seems to dominate our professional listservs and the questions raised never seem *quite* the same, so the answers never seem *quite* as straightforward as we need them to be in order to feel we have come to a definitive conclusion.

There are lots of pieces that could be discussed (ad infinitum?). What should go into an ESA policy? How should we handle requests for multiple ESAs? What should we do about request for exotic/weird animals? Where are the ESAs allowed to go in the residence hall? How do we

handle roommate approval/acceptance? How old does the animal have to be before you let it live in the residence hall? There are a lot more issues. But, today, I am going to focus on just one. The BIG one. Documentation of need for ESAs.

In July, 2015, I wrote a post that focused on the emerging cottage industry of folks providing bogus ESA certification. (A slightly updated version of that post is appended here.) My theme was that we had reached a point where it was time to say, "ENOUGH!" and take some control over the process. I suggested a four-step process for evaluating whether the documentation being provided should be considered suspect, and how to handle it if you thought it was.

That was then. This is now. It is two years later and things are worse – MUCH worse – than they were in July, 2015. It isn't that the DSS community didn't listen and TRY to take a stand on the issue. We did (we are!). Over the last two years, I am guessing that I have shared the ESA Watch List, the suggested form for use in gathering information, and the accompanying documentation as to HOW to use the list and the form with a couple hundred DSS providers out there. As a community, we have come to accept that not all documentation for ESAs is coming from legitimate sources, and we are getting better at spotting the fakes. And, apparently, no one cares. The fact that we know what is right – and what is certainly NOT right – doesn't seem to make much difference in terms of what is happening on our campuses (that is, how DSS providers and their colleagues from Res Life are allowed to apply what we know).

What set me off this time? A discussion on the DSSHE-L last week. Someone raised concerns about documentation received from a questionable provider. It turned out that this individual was known to *lots* of people on the list. Here is an excerpt from a post I sent to DSSHE over the weekend:

... What concerns me most, however, is how hesitant most service providers seem to be in being able to defend their decisions. THAT is the part that is going to matter the most in taking and making a stand, and THAT is the part that seems our greatest weakness.

Nowhere was that more evident than in the discussion of Dr, Lisa Isaac and her ESA letters for students, purchased from the internet for the right price. Regardless of what you believe may be appropriate as to limits on telehealth services overall, there is no way that anyone reading over the myriad of examples given by folks on this list can come to any rational conclusion other than that Dr. Lisa Isaac is inappropriately doling out letters of support for ESAs. In the past few days, folks have confirmed:

** receiving EXACTLY the same letter in support of an ESA for 3 students on one campus with nothing changed except the name at the top*

** receiving a letter from Lisa Isaac addressed to "Landlord". When questioned, that letter was replaced by a new letter with exactly the same information, but now addressed to the college*

** (in one case) speaking directly to Lisa Isaac and having her confirm that she had never met the student but had handled the diagnosis via review of an online questionnaire in a "relationship" that had begun through a referral from a website that advertises the availability of such letters*

** Letterhead stationary citing a physical location in New Jersey, but with licensing in a number of*

other states (not necessarily the student's home state); physical locations cited for those distant practices included a parking garage and a UPS drop store.

** letters from this same person (likely the same letter -- I have seen at least two that are identical from different states), showing up on campuses from Wyoming to Maryland, Texas to Vermont, and (likely) a whole lot of places in-between.*

Is there anyone reading that rundown who doesn't believe that a letter from Lisa Isaac is meaningless in establishing a true need for an ESA? This is NOT about whether or not the student truly has a mental health disability or needs/can use an ESA. This is about whether documentation provided by THIS WOMAN should be considered "documentation from a reliable source." It shouldn't. This SCREAMS "bogus."

So what's the problem? The problem is that when someone holding one of these fake letters from Lisa Isaac went to the college attorney, he apparently looked to see if Lisa Isaac was actually licensed in that state (she is), and then told the service provider that she must accept the documentation.

Things are worse today than they were in the summer of 2015 because:

* The bogus providers have gotten more savvy in how to present their letters; our ESA Watch List isn't going to do much good in ferreting out the fakes when the letters we are receiving don't come from or reference CertaPets or the US Dog Registry of America. Rather, they come on letterhead from the (so called) professional and never indicate that the student found their way to this professional FROM one of the bogus websites on our list. (How do you think students from Wyoming, Maryland, Ohio, Oklahoma, Vermont, and Texas all found their way to Lisa Isaac? Because they were referred to her as "one of our professionals" from a site like this. I know Lisa Isaac takes referrals from the CertaPet site. I wouldn't be surprised if she isn't listed through several such scam sites.)

* More students are seeing animals on campus/in the residence hall and thinking, "gee... that would be nice." I am not suggesting that all requests for ESAs are bogus. But I AM suggesting that a lot of students are actively considering a request for an ESA (whether or not for the right reasons) who would never have thought about it as a possibility five years ago.

* Mostly, things are worse because the administrators and college attorneys who are called on to support our denials are, too often, on a very different page than we are when it comes to the criteria to evaluate the situation. DSS providers want to look at whether the documentation legitimately establishes a disability (substantial limitation in a major life activity) and whether there is a (legitimate) clear nexus between the presence of the animal and how it might mitigate the symptoms of the disability. In other words, we are concerned about preserving the *intent* of the regulations – providing reasonable accommodation to a student with a disability. It appears (from anecdotal report) that the disability-related intent of the regulations is not always considered by those above us. The administrators are concerned with not making waves and of not ticking off the student/parent/alumni. They gravitate toward a resolution that will keep everyone happy. They

aren't likely to consider the impact on the campus community – only the request of the individual student.

And the college attorneys? Not surprisingly they continue to be “risk averse.” They may have little understanding of the intended purpose/use of an ESA, and very little in-depth knowledge of the regulations and case law. What they DO know is that questioning documentation from a licensed professional MIGHT create a problem – so why do it? The impact on campus housing, the campus community, or the integrity of the process is of no concern.

Let's try this again, folks...

ENOUGH!!!

(snip)

Janie

Making the choice to do what is right is not always easy, but it is the only way that we can ever learn to live without regrets.

What is right is not always popular, and what is popular is not always right.
Albert Einstein

It takes a great deal of courage to stand up to your enemies, but a great deal more to stand up to your friends.
JK Rowling (via Albus Dumbledore!)

June 8, 2018 In My Next Life...

“Debunk (verb) – expose the falseness or hollowness of a myth, idea, or belief.”

Let's start out with a Friday Funny. Go to:

ESAdoggy.com

(you may have to cut and paste the link into your browser)

You will reach a page with a black banner and five stars – and a whole lot of rhetoric. Scroll down until you see the part that says “50 States Covered – 242 Licensed Therapists.” See the map below that? The first time I looked at the map, I thought, “there aren't 242 flags on that map.” So I Googled the image. What you are looking at is the location of every Whole Foods Market in the country.

The first time I visited the site, they were having a sale on ESA letters. The letters cost X amount, but if you bought that day, you could get a \$10 discount. They also had a sale on ESA letters during Memorial Day Weekend, in honor of our veterans.

The guy who owns this site and is developing this website is a real piece of work. There are all sorts of interesting tidbits in his background. But his work on this ESA Doggy site is a great example of the worst abuses of the system. He is actually a website guru by training, so he is very savvy about developing the website with lots of bells and whistles, But what scared me about it 6 weeks ago, because it looked so slick and professional-looking, seems to be deteriorating. This jerk changes the website on an almost daily basis, and the recent changes are not for the better.

He started out listing his business address in Boca Raton, FL. It is a virtual address. The company that is really in Suite 110, 980 Federal Highway makes their money by renting out the right to use their address on your website and business cards. That was annoying, but I have seen other fake ESA sites do the same. Within the last week, though, he has gone on to greater glory. He now quotes branch offices in Atlanta, Los Angeles, Toronto, and London (Toronto? London? What the...???). They are ALL virtual addresses, and the buildings shown are pictures stolen off the internet (not the addresses listed). You will notice that in the navigation bar at the bottom, after the address listing, it says, "No Walk Ins, Please." Gee – ya think?

While you are down there in the navigation bar, note the many links shown – Terms of Service, Cookie Policy, HIPAA, Privacy Policy, and the rest? They are all statements stolen from other websites, lifted either verbatim or with very few changes. How is this for irony? He has a 12 pt. statement of his business ethics – he stole it from an Ethics Institute in California.

I will leave you to explore what's here further at your leisure. It is really rather appalling... and if you don't laugh you'll cry. Make sure to check out the ESA Guard guarantee – including the "few restrictions" that you have to drill down to find. Don't just look at the front page listing of what you get for \$139 ESA Housing Letter. Click through on the "Shop Now" button and take a look at the extras that are recommended to accompany that \$139 purchase. Like I said... a piece of work!

Of course, the problem is that if you go back and look at what is there WITHOUT the background information... if you were the average consumer who was looking for an ESA letter -- what would you think of what is here? It looks scary good. Sigh.

In my next life, I am coming back as a fact checker...
(snip)

NOTE: As of this writing (August 1, 2018), the ESAdoggy website has evolved into something that is unrecognizable from the description given just two months earlier. It has NOT evolved for the better. It is much worse, with an entire array of bogus claims, services, and rhetoric. But the site is much more impressive in its presentation. As stated above – this one is scary!
