

# Emotional support for everyone



**While emotional support animals can provide comfort for those with mental or emotional disabilities, several factors must be considered when determining the necessary oversight of these animals in institutional academic or research buildings. We invited experts from Wayne State University (Erin Katz), University of California San Francisco (Carine Serageldine) and the University of Oregon (Stephanie Womack, Audrey Harris and Kathy Snell) along with Acting Director, OLAW (Axel Wolff) to respond to a perplexing situation at Great Eastern University.**

When Mr. Cooper, Great Eastern University (GEU)'s Post-Approval Monitor, discovered emotional support animals (ESAs) that GEU's faculty member Dr. T. Guaio has been keeping in his office for the past several months, Cooper immediately notified the Attending Veterinarian (AV) to obtain clinical care for the animals. Evidently, Guaio simply purchased five rats from a pet store (i.e., animals not bred for research), set up a large cage in his office and started housing the rats. Although Guaio handles the rats daily, provides clean food and water, and does his best to keep the cage clean, the maintenance of these animals is far below the expected standards of care of GEU's animal care and use program, and is even below the standards one would expect for pet animals. All of this was quite upsetting to Mr. Cooper and to GEU's veterinary staff and IACUC. Consequently, Guaio was asked to attend an IACUC meeting to discuss the matter.

In advance of the meeting, Guaio wrote a letter to the IACUC indicating that these rats were ESAs, and therefore were covered by the Americans with Disabilities Act (ADA). In short, the IACUC had no purview over these animals or their care.

During the IACUC meeting, Cooper informed Guaio and the IACUC that although there are laws addressing service animals (i.e., the ADA and Section 504 of the Rehabilitation Act (See Related links)), there are no laws governing

ESAs. The ADA<sup>1</sup> defines a service animal as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability," and further states that "While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA." Therefore, ESAs are not subject to the same laws as service animals.

Cooper also provided the IACUC with a few examples of the problems with the care of these animals; the cages for the rats had never been sanitized, the animals received no thermoregulatory support, the lighting was inconsistent, the room was often kept quite dark and the animals had no enrichment or areas to play. The IACUC deliberated on the matter (e.g., discussed the care of the animals; whether they were exempt from IACUC review and approval; the fact that the animals were visible to all students who met with Guaio in his office), and determined (by majority vote of a quorum) that Guaio must submit an IACUC protocol application immediately and that the AV would, on a fee-for-service basis, take over the husbandry and veterinary care of these rats until IACUC approval and standard operating procedures on the husbandry and care of the animals were in place.

What do you think:

- Do (should) ESAs fall under the IACUC's purview?
- How else could GEU have handled this situation?

## Response from EK and CS

ESAs fall under the purview of the institution, not the IACUC which is charged with oversight of the animal care program for animals used in research, teaching and testing<sup>2</sup>. The requirement for an animal use protocol, and institutionally provided husbandry and veterinary care exemplify a gross overreach of power. Instead, GEU should establish policies and guidelines for ESAs, similarly to service animals (see Related links). Such policies should be collectively drafted by many GEU departments, including occupational health and safety, legal, senior administration, as well as disability services and/or diversity and inclusion, and potentially others. The IACUC and institutional biosafety committees may play a role if such animals enter

research areas. Management and implementation of such policies should involve the human resources department.

While the IACUC is correct that ESAs are not service animals protected under federal law<sup>1</sup> (and see Related links), there may be applicable state or local laws (see Related links). Thus, it is imperative that legal counsel assists in drafting an institutional policy. California law, for example, provides protections and accommodations for employees with ESA under the Fair Employment and Housing Act<sup>3</sup>. Thus, while Dr. Guaio made wrong inferences based on the ADA, he may still be afforded protections in his respective state and may have a case of discrimination against GEU. Although GEU may be required by law to provide reasonable accommodations for Dr. Guaio, the institution can impose stipulations such as documentation on necessity from a medical professional and ensure that the animal does not endanger the health or safety of others. This should be discussed prior to bringing the ESA to work, which Dr. Guaio failed to do. Additionally, there are no requirements to allow multiple ESAs or permanent housing of an ESA on campus.

Regardless of Dr. Guaio's protection under the law from discrimination, this does not grant immunity from animal cruelty prevention laws. Again, using California as an example, failure of an owner or keeper of any animal to provide care and attention is a misdemeanor<sup>4</sup>. While it is unlikely that substandard care rises to the legal definition of failure to provide care, it is concerning that care described is below the standard expected for a pet rat. However, this may have been easily remedied with education and training on rat husbandry and species-specific needs, rather than forcing Dr. Guaio to relinquish all rat care to GEU's laboratory animal department. The AV and/or the IACUC could have provided such training.

In conclusion, mistakes were made by both parties resulting in this unfortunate and avoidable situation. GEU should have established an ESA policy pursuant to local and state laws. Dr. Guaio should have consulted the policy, provided any required documentation, and received prior approval before bringing the rats to campus. The IACUC, upon discovery of the rats, should have involved upper management and legal on how to best handle the situation (as no ESA policy existed), rather than treat it

## Box 1 | A Word from OLAW

In this scenario, an IACUC deliberates the degree of oversight required for emotional support animals at the institution. Per the Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy), the IACUC is responsible for oversight of activities involving live vertebrate animals used or intended for use in research, research training, experimentation, or biological testing, or for related purposes in PHS-funded or supported activities<sup>6,7</sup>. The PHS Policy applies to research conducted or supported by several PHS agencies including the National Institutes of Health (NIH), Biomedical Advanced Research and Development Authority (BARDA), Centers for Disease Control and Prevention (CDC), and Food and Drug Administration (FDA). Through memoranda of understanding, this requirement also applies to activities conducted or supported by the National Aeronautics and Space Administration (NASA), National Science Foundation (NSF), and Department of Veterans Affairs (VA)<sup>8</sup> (and see Related links). If additional activities and animals are covered under the Assurance, the institution is expected to follow its Assurance as described<sup>9,10</sup>. Further, care must be taken to prevent activities not subject to the PHS Policy

from adversely affecting animals that are subject to the PHS policy<sup>11</sup>.

The IACUC may choose to extend oversight to animals not described in the Assurance, and in doing so may choose to require a protocol or use other methods of oversight at its discretion, such as standard operating procedures and institutional policies<sup>10</sup>. To ensure that animals subject to the PHS Policy are not impacted, consultation with the veterinarian regarding potential biosecurity and health concerns is recommended. To ensure the integrity of the health program for personnel who work in laboratory animal facilities or have contact with animals, and so that risks to students and visitors to Dr. Guaió's office are assessed and minimized, consultation with occupational health and safety personnel is recommended<sup>12</sup>. As mentioned by commenters, it is also important to involve institutional leadership and legal counsel to identify applicable federal, state, and local laws, as well as relevant institutional policies and potential liabilities.

Keep in mind that this scenario does not describe emotional support animals as part of a study subject to the PHS Policy. However, such studies are sometimes conducted and animal subjects must then be covered in accordance with the PHS Policy.

as unauthorized animal use, due to the absence of an approved protocol.

### Response from SW, AH and KS

While there are no Federal laws that are applicable to this scenario, when animals are living in institutional academic or research buildings, the IACUC should review existing institutional policy, including any policies about ESAs and animals on institutionally owned property. IACUCs must be empowered to make recommendations to the Institution to ensure the policy is upheld. This may include working with upper administrators, occupational or environmental safety, risk management and/or legal counsel.

Additional issues than those raised in the original article also need to be part of the IACUC discussion; including the IACUC's authority to require actions, as these animals are not a USDA-covered species, and students entering the office do not fall within the PHS definition of IACUC-covered animal activities (such

as research, research training, experimentation, or biological testing or for related purposes)<sup>5</sup>. Biosecurity/cross-contamination risks to research animals from the random sourced rats as well as health risks to individuals exposed to the animals or entering the location housing the animals are other important considerations. Including these issues in the discussion would likely have led to a different selection of animal care providers than the AV, if the IACUC is deemed to have such authority. Representation from the institutional safety unit on the IACUC is prudent to include as standing to ensure human safety concerns are taken into consideration in every IACUC review.

While ESAs are a valuable source of symptom mitigation for those with mental or emotional disabilities, there are a variety of factors that must be considered prior to approval and allowance of ESAs in institutional academic or research buildings. These factors should be considered in detail by the IACUC along with

other regulatory bodies across the University to reach consensus that aligns with current policies and procedures. Careful consideration should be given to biosecurity risks that may impact the health status of research animals and the subsequent effects on research across the University.

### Compliance considerations

The Protocol Review coordinators offer the following compliance considerations:

**Do (should) ESAs fall under the IACUC's purview and how should GEU's IACUC handle this situation?** No, ESAs do not fall under the purview of the IACUC: they are not used for research, teaching or testing. Consequently, the standards set forth in the regulations (e.g., the *Guide*) do not apply. Furthermore:

- Under Title II and Title III of the ADA, dogs are the only species eligible to be service animals (although miniature horses may be eligible under certain circumstances).
- Service dogs do work for people with diagnosed disabilities.
- ESAs must be prescribed by physicians or licensed mental health professionals and are for individuals with disabling mental illness, affording these individuals certain rights under the U.S. Fair Housing Act.
- There are no limitations on what species can be claimed as an ESA.
- Unlike service dogs, ESAs can be refused entry to public spaces and privately owned entities.
- While "Employers are required to provide reasonable accommodation," the ADA also states that "Both service and emotional support animals may be excluded from the workplace if they pose either an undue hardship or a direct threat in the workplace<sup>1</sup>."

**Other considerations.** Further considerations on this scenario include:

- Guaió's rats (that he owns personally) are not covered under the ADA and would not qualify as ESAs if they were not prescribed by a physical/mental health provider.
- If the rats pose a direct threat in the workplace, then GEU can exclude them, for example:
  - Guaió also uses rats in research; what risk do these ESAs pose to the health and safety of the research colony (e.g., does it violate the AV's biosecurity program)?
  - Guaió is a student advisor to non-animal users; what risks (e.g., allergies) do these ESAs pose to students and other visitors?
- If GEU permits ESAs to be housed on campus, then who is ultimately responsible for ensuring the well-being of these animals and

how should this be documented, if at all? For example:

- Husbandry and clinical care (weekends, holidays, vacations).
- In case of emergencies (e.g., fire, power outage, natural disaster).
- Should GEU communicate the fact that these pets do not fall under the purview of the IACUC and are not governed by the same regulations as research animals and delineate limitations on the location and use of these ESAs (e.g., they should not be brought into the lab, and should not be used for teaching or demonstration without IACUC approval)?

### Response from OLAW

Comments from OLAW can be found in Box 1.

*This protocol review was coordinated by Lauren Danridge and Bill Greer.*

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### References

1. Brennan, Jacquie; Nguyen, Vinh (Ed.). "Service Animals and Emotional Support Animals." The Americans with Disabilities Act (ADA) National Network, <https://adata.org/guide/service-animals-and-emotional-support-animals>
2. Institute for Laboratory Animal Research. *Guide for the Care and Use of Laboratory Animals*, 8<sup>th</sup> edition (National Academies Press, Washington, DC, 2011).
3. California Fair Employment and Housing Act (FEHA). Government Code §12900-12996.
4. National Agricultural Law Center Research, CA Penal §597.1(a)(1) <https://nationalaglawcenter.org/wp-content/uploads/assets/animalcruelty/california.pdf>
5. Public Health Service. *PHS Policy on Humane Care and Use of Laboratory Animals* (U.S. Department of Health and Human Services, National Institutes of Health, Bethesda, MD, 2015).
6. OLAW, NIH. Public Health Service Policy on Humane Care and Use of Laboratory Animals. (US Department of Health and Human Services, Bethesda, Maryland, USA, 2015). IV.A.3.a.
7. OLAW, NIH. Public Health Service Policy on Humane Care and Use of Laboratory Animals. (US Department of Health and Human Services, Bethesda, Maryland, USA, 2015). III.

8. OLAW, NIH. Public Health Service Policy on Humane Care and Use of Laboratory Animals. (US Department of Health and Human Services, Bethesda, Maryland, USA, 2015). II.
9. OLAW, NIH. Public Health Service Policy on Humane Care and Use of Laboratory Animals. (US Department of Health and Human Services, Bethesda, Maryland, USA, 2015). IV.A.1.
10. Brown, P. *Lab Anim (NY)* **48**, 69 (2019).
11. Public Health Service Policy on Humane Care and Use of Laboratory Animals – Frequently Asked Questions. Applicability of the PHS Policy, Question No. A.1. (US Department of Health and Human Services, Washington, DC).
12. OLAW, NIH. Public Health Service Policy on Humane Care and Use of Laboratory Animals. (US Department of Health and Human Services, Bethesda, Maryland, USA, 2015). IV.A.1.f.

### Competing interests

The authors declare no competing interests.

### Disclaimer

The views expressed in "A word from OLAW and USDA" represent the positions of OLAW/NIH and USDA, respectively, but the remainder of the contributions in this article do not represent official support or an endorsement by NIH, USDA, or any government agency.

### Related links

**U.S. DHHS, Fact Sheet:** <https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/504.pdf>.

**OLAW, Webinar 2021, I ACUC responsibilities regarding service animals:** <https://olaw.nih.gov/education/educational-resources/webinar-2021-06-10.htm>.

**ADA.gov, FAQs:** <https://www.ada.gov/resources/service-animals-faqs/>.

**Memoranda of Understanding:** <https://olaw.nih.gov/resources#meund>