The 2009 Amendments to the Americans with Disabilities Act – What They Mean for States and Schools

Studies show that supportive educational environments help children reach their full potential and maximize opportunities as they grow into adulthood, yet mental and physical impairments can make it difficult for children to take advantage of certain educational opportunities. For this reason, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA) in 2009 to ensure that all students, regardless of their disabilities, have equal access to an appropriate education.

Congress passed ADAAA to broaden many of the protections the original Americans with Disabilities Act of 1990 erroneously restricted. To ensure school children with disabilities were also among those who benefited, Congress applied a conforming amendment to Section 504 of the Rehabilitation Act of 1973 (Section 504) for programs that receive federal education funding. This action created a less restricted definition of disability, allowing children ineligible under the Individuals with Disabilities Education Act (IDEA) to receive full protection under ADAAA. Consequently, state policymakers now have a responsibility to create guidelines for a class of students who were previously ineligible for services and accommodations. Because of ADAAA, children with food allergies, asthma, diabetes, HIV and others who only require reasonable accommodations as defined by the Office of Civil (OCR) rights at the U.S. Department of Education without special education services are now entitled to protections under Section 504.

Section 504 and IDEA: What’s the Difference?

Section 504 is an anti-discrimination law that protects the rights of individuals with qualified disabilities pursuant to ADAAA. The OCR is responsible for enforcing Section 504 in programs and activities that receive financial assistance from the Department in an effort to eliminate discrimination against students with disabilities. Under Section 504, a student without a learning disability is protected as long as he or she has a condition that limits a major life activity including, but are not limited to, seeing, hearing, speaking, eating, sleeping, standing, breathing, walking, lifting, bending, learning, concentrating, thinking, communicating, and the ability to care for one’s self. This also applies to digestive, circulatory, reproductive, neurological, and respiratory body functions, as well as impairments that are episodic or in remission.

The IDEA is a grant statute that funds special education programs. IDEA sets forth the procedural requirements for students with disabilities who require special academic instruction. If students are eligible under IDEA, schools must provide them with an individualized education plan (IEP), a legal document that outlines the responsibilities of the school district and staff with regard to the student’s education. A student eligible under IDEA automatically qualifies for protection under Section 504, but a student protected under Section 504 may or may not be eligible for special education services under IDEA.

Determining Students’ Eligibility for Protection under Section 504

Section 504 stipulates that “no otherwise qualified individual with a disability in the United States... shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” Under Section 504, a school district that receives federal funds must provide a free appropriate public education (FAPE) to every disabled student within its jurisdiction, without considering the extent of the disability. FAPE includes standard or special education services that meet the educational needs of disabled students “as adequately as the needs of nondisabled students are met.”
To meet the needs of students with disabilities, schools must evaluate each student to ensure children are not misclassified or mislabeled. They can apply the same method used to identify students eligible for Section 504 as they use to evaluate the needs of students under IDEA. If they choose to use an alternative procedure, it must follow the guidelines set forth Section 504 regulations. The evaluation process should also consist of standards and procedures for the initial and timely re-evaluations of students who request special services. To this end, tests used to determine whether a student is qualified as disabled should not reflect the student’s disability but rather his or her ability and educational attainment at the time of the evaluation. Section 504 also requires that evaluation materials be designed to identify the specific educational need of the student and not measure intelligence.

Schools determining whether a student without a learning disability is eligible for accommodations or services under Section 504 may no longer consider the impact of mitigating devices, with the exception of eyeglasses or contact lenses. A non-exhaustive list of mitigating devices stated in the law includes medication, prosthetics, medical supplies or equipment, hearing aids, oxygen therapy, and learned behavioral or neurological modifications.

Transitory impairments lasting six months or less do not constitute a disability under the law. Nevertheless, students requesting special education or related services should be evaluated on a case-by-case basis as some normally short-term impairments can last longer than six months.

**Section 504 Plan or IEP?**

Once a student is identified as having a disability, a school district must develop a suitable Section 504 Plan to ensure the student receives the necessary services, accommodations, or aids for an appropriate education. If a disabled student is protected under IDEA and has an IEP, the same plan can be used to satisfy the requirements for FAPE under Section 504. Alternatively, if a student has a disability consistent with IDEA guidelines but does not require special education services, he or she may still be eligible for protection under Section 504. In the latter case, special accommodations could be made to assist the student with performing the same academic tasks as other students by adjusting the curriculum, classroom environment, and time allotted to complete tasks.

**State Policies**

**North Carolina:** The North Carolina Department of Public Instruction implemented a policy that specifically addresses transitory impairments with regard to Section 504. Determination as to whether a transitory impairment qualifies as a disability under law must be resolved on a case-by-case basis “taking into consideration both the duration (and expected duration) of the impairment and the extent to which the impairment limits one or more major life activities of the affected student.” The policy states that students with transitory impairments may be provided with special accommodations during testing and regular classroom instruction provided the accommodations are consistent with Section 504 provisions.

**Michigan:** Michigan’s State Board of Education developed a policy specifically for students who suffer from asthma, which classifies as a qualified impairment under ADAAA. The policy states that an asthmatic student should receive modified activities as indicated by his or her Section 504 Plan or IEP.

**Colorado:** In Colorado, the State Board of Education adopted a policy to administer actions under the Colorado School Children’s Food Allergy and Anaphylaxis Management Act. The policy calls for the school nurse or school administrator with the school nurse to develop and implement a plan for each student “diagnosed with a potentially life-threatening food allergy.” Furthermore, each school district must develop and implement a policy to manage food allergies and general anaphylaxis for its students, including reasonable accommodations to limit a student’s exposure to known allergens.

**Resources**

To find out more about the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), visit www.eeoc.gov/laws/statutes/adaaa_info.cfm.

For more information about ADAAA and Section 504 of the Rehabilitation Act of 1973, read “Protecting Students with Disabilities” at www2.ed.gov/about/offices/list/ocr/504faq.html.

To learn more about what it means to provide students with a free and appropriate public education (FAPE) visit www.fape.org.