



Update on the Americans with Disabilities Act

By Charles J. Russo, J.D., Ed.D., and Allan G. Osborne, Jr., Ed.D.

The changes to Title I of the ADA expand the definition of “disability,” making it easier for individuals to prove that they were subjected to workplace discrimination.

In 1990, Congress enacted the Americans with Disabilities Act as a comprehensive mandate to eliminate discrimination against individuals with disabilities. The ADA’s primary intent was to extend the protection of Section 504 of the Rehabilitation Act of 1973. The major difference between the two laws is that Section 504 applies to programs that receive federal funds, whereas the ADA primarily, but not exclusively, covers private programs, particularly employees.

Based on the far-reaching significance of the ADA, particularly as it presents financial implications for school boards and their employees, this column examines the ADA’s major titles, including a review of its 2008 amendments that took effect on January 1, 2009. It then reviews relevant case law to provide readers with a sense of how the courts have addressed the needs of employees with impairments under the ADA. And finally, it offers recommendations for school business officials and other education leaders who are charged with overseeing the resources of their districts as they implement the reasonable accommodations provisions of the ADA as they relate to employees.

ADA in General

Patterned largely after Section 504, the ADA protects individuals with disabilities by imposing extensive obligations on private-sector employers, public services and accommodations, and transportation. The ADA’s preamble states that the act is designed “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” (42 U.S.C.A. § 12101). This clarifies that the ADA extends the protections afforded by Section 504 to private programs and

activities that are not covered by Section 504, since they do not receive federal funds.

The ADA provides a comprehensive mandate to eliminate discrimination against people with disabilities while providing “clear, strong, consistent and enforceable standards” (42 U.S.C.A. § 12101[b][2]) to help accomplish this goal. The ADA’s broad definition of a disability is comparable to the one in Section 504: “(a) a physical or mental impairment that substantially limits one or more of the major life activities; (b) a record of such an impairment; or (c) being regarded as having such an impairment (§ 12102[2]).

As in Section 504, “major life activities” include caring for oneself, hearing, walking, speaking, seeing, breathing, and learning. Also, like Section 504, the ADA does not require individuals to have certificates from doctors or psychologists in order to be covered by its provisions. However, the ADA does allow employers to request needed medical documentation to help evaluate the length of time and the degree to which employees with medical conditions are to be substantially limited in major life activities.

When considering the ADA’s effect on school boards as employers, the sardonic comment of Ed Koch, former mayor of New York City, comes to mind. Koch reportedly stated with some disdain that it would have been easier for New York City to have purchased limousines for all individuals with disabilities than to pay to make its bus system fully accessible (Bricketto 2003). Analogously, if employees, not to mention parents, were fully aware of the effect of the ADA and its ability to provide educational programming, especially in light of its recent amendments, schools would likely be significantly different places.

The ADA specifically excludes a variety of individuals, some of whom may be school employees—most notably those who use illegal drugs (42 U.S.C.A. § 12210). The ADA also excludes transvestites (42 U.S.C.A. § 12208); homosexuals and bisexuals (42 U.S.C.A. § 12211[a]); transsexuals, pedophiles, exhibitionists, voyeurs, and those with sexual behavior disorders (42 U.S.C.A. § 12211[b]); as well as those with conditions such as psychoactive substance use disorders stemming from current illegal use of drugs (42 U.S.C.A. § 12211[c]).

Moreover, the ADA modifies Section 504 insofar as it covers individuals who are no longer engaged in illegal drug use, including those who have successfully completed drug treatment or have otherwise been rehabilitated and those who have been “erroneously” regarded as being drug users (42 U.S.C.A. § 12110). The ADA permits drug testing by employers to ensure that workers comply with the Drug-Free Workplace Act of 1988.

While permitting employers to prohibit the use of illegal drugs or alcohol in the workplace, the ADA is less clear over the status of alcoholics, as it appears that the protections afforded rehabilitated drug users extends to recovering alcoholics.

The ADA’s Titles

The first of the ADA’s five titles, which is addressed in the 2008 amendments, covers private-sector employment and is directly applicable to nonpublic schools. Like Section 504, it requires officials to make reasonable accommodations for otherwise qualified individuals once they are aware of their conditions; to be covered by the ADA, staff must inform officials of their conditions while making specific suggestions on how their needs can be met.

Title II of the ADA covers public services of state and local governments for employers and providers of public services, including transportation, and most notably education. In an important provision for school

boards, the reasonable accommodations specifications imply employment accommodations.

Title III of the ADA, which expands the scope of Section 504, addresses public accommodations, covering both the private and public sectors. This title includes private businesses and a wide array of community services, including buildings, transportation systems, parks, recreational facilities, hotels, and theaters.

Title IV of the ADA deals with telecommunications, specifically voice and nonvoice systems. Title V, the ADA’s miscellaneous provision, stipulates not only that the act cannot be construed as applying a lesser standard than under Section 504 and its regulations but also that qualified individuals are not required to accept services that do not meet their needs. In addition, the ADA employs defenses that parallel those in Section 504.

As applied to employees, the ADA’s effect on schools is most significant in the areas of reasonable accommodations. Insofar as schools are subject to many ADA-like regulations through the rules enacted pursuant to Section 504, officials can avoid difficulties in complying with the ADA by keeping policies and procedures in place to ensure reasonable accommodations.

2008 ADA Amendments

When Congress enacted its first revisions of the law in the ADA Amendments Act of 2008, it explicitly abrogated the Supreme Court’s rulings in *Sutton v. United Air Lines* (1999) and *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002), cases that reduced the protections that Congress intended to provide for employees.

In *Sutton*, the Court found that since people with mental or physical impairments that could be corrected through medication or other steps did not have impairments that limited the major life activity of work, they were not protected by the ADA. In *Toyota*, the Court held that “sub-



stantially limits” meant that to be covered by the ADA, impairments had to prevent or severely restrict individuals from taking part in activities of central importance to the daily lives of most people, highlighting the idea that an impairment’s effect must be permanent or long term before people are entitled to protection under the act.

The changes to Title I of the ADA expand the definition of “disability,” making it easier for individuals to prove that they were subjected to workplace discrimination, especially if they suffer from epilepsy, diabetes, cancer, multiple sclerosis, and other ailments and were improperly denied protection insofar as their conditions could be controlled by medications or other measures.

The ADA amendments provide an exception so that employers cannot consider the mitigating effects of ordinary eyeglasses or contact lenses in evaluating whether visual impairments substantially limit major life

activities. As noted, to be protected by the ADA, employees must inform officials of their conditions and provide specific suggestions on how their needs can be met. The amended act also changes Section 504 so that the definitions of “disability” and “major life activities” in both laws are the same. Since the act went into effect on January 1, 2009, it remains to be seen exactly how courts will interpret its new provisions.

Boards can avoid making requested accommodations if doing so would cause undue hardships.

When otherwise-qualified employees allege discrimination based on disabilities, school board officials must make reasonable accommodations. Still, boards can avoid making requested accommodations if doing so would cause undue hardships. In other words, boards can avoid compliance if making accommodations would result in “a fundamental alteration in the nature of [a] program” (*Southeastern Community College v. Davis* 1979, p. 410); if they impose “undue financial burden[s]” (*Davis*, p. 412); or if having individuals present creates a substantial risk of injury to themselves and/or others (*School Board of Nassau County, Fla. v. Arline* 1987).

Litigation Involving the ADA

The Supreme Court has yet to review a case involving the ADA in a K–12 school setting. Even so, several lower courts have addressed ADA claims in educational contexts.

For example, the federal trial court in Kansas rejected the claim of a teacher who was seriously hearing impaired whose school board refused to hire a full-time classroom aide to help him preserve classroom discipline (*Henry v. Unified School District* 2004). The court held that since

disciplining students was an essential job function, providing the aide was not a reasonable accommodation under the ADA.

Similarly, the federal trial court in New Hampshire rejected the claims of a teacher with attention-deficit/hyperactivity disorder whose contract was not renewed, that he be allowed to permit his students to listen to music and play games for up to half of the class periods as a means of bet-

ter controlling their behavior (*Hess v. Rochester School District* 2005). The court found that had the board granted the teacher’s request, it would have proved that he failed to perform the essential function of teaching.

In the first of two cases from New York, a federal trial court dismissed the claim of a guidance counselor who suffered from a learning disability, dyslexia, and agraphia, which affected her ability to write (*Hanig v. Yorktown Central School District* 2005). The court thought that since the counselor resigned rather than be denied tenure, her claim that officials violated her ADA rights in informing a possible employer about her writing ability did not qualify as retaliation under the statute.

Another federal trial court in New York rejected the ADA claim of a former custodian who suffered from narcolepsy and sleep apnea (*Sanzo v. Uniondale Union Free School District* 2005). The court ruled that the board could dismiss the custodian since, rather than refer to his illness, officials articulated a legitimate nondiscriminatory reason in light of his poor job performance and misconduct.

Courts permitted suits to proceed or entered judgments in favor of employees in disputes where an injured

groundskeeper challenged a board’s refusal for reinstatement (*Johnson v. Paradise Valley Unified School District* 2001) and where otherwise qualified individuals needed rest periods during the day along with a transfer to a school closer to home (*Young v. Central Square Cent. School District* 2002) and access to an accessible bathroom and keys to locked emergency doors due to having degenerative arthritis (*Gordon v. District of Columbia* 2007).

Courts denied relief where teachers and other employees suffered from a disabling kidney disorder (*Gammage v. West Jasper School Board of Education* 1999); refused to undergo psychological testing despite being disruptive at school (*Sullivan v. River Valley School District* 1999, 2000); had schizophrenia (*Boyer v. KRS Computer and Business School* 2001); sought to perform only light duties (*Hinson v. U.S.D. No. 500* 2002); had arm and back pains along with chronic headaches (*Reifer v. Colonial Intermediate Unit 20* 2006); threatened to kill students even though she claimed that her speaking out was the result of a documented head injury (*Macy v. Hopkins County School Board of Education* 2007a, 2007b); requested accommodations for osteoarthritis (*Filar v. Board of Education of the City of Chicago* 2008); and had an unspecified learning disability (*Falso v. Churchville-Chili Central School District* 2008).

The courts generally agreed that requested accommodations were not reasonable, that conditions did not limit major life activities, or that individuals were not otherwise qualified.

Recommendations for Practice

When dealing with employee requests for accommodations, school business officials and other education leaders should consider the following suggestions.

Consistent with the dictates of the ADA, school boards should designate systemwide compliance officers.

School boards should inform employees, through such avenues as orientation sessions for new staff, district Websites, and hard copy, that such compliance officers are in place.

Policies should identify the avenues of redress available to employees if their requests for accommodations are denied.

Compliance officers, in consultation with other officials, should update job descriptions to ensure that they are consistent with the ADA's new provisions.

Along with promulgating policies as noted in the second point, districts should consider convening information sessions at which officials review the changes in the law with administrators and employees since this will help ensure compliance.

Policies should detail the procedures that employees must follow when requesting reasonable accommodations, such as flexible scheduling or shorter working hours, due to their impairments and that they should be prepared to offer suggestions designed to meet their needs. In addition, policies should identify the avenues of redress available to employees if their requests for accommodations are denied.

Districts should reexamine the status of employees, such as those with controlled diabetes who were ineligible for protection under the original ADA. If these employees were denied accommodations, they might now qualify for accommodations, such as being able to take more frequent breaks to monitor their blood glucose levels.

Administrators should make individualized determinations regarding

the status of employees with impairments and their needs for accommodations without regard to mitigating factors other than ordinary eyeglasses and contact lenses.

Policies should specify that officials can request medical documentation, if needed, to assist in evaluating the

length of time and the degree to which employees with medical conditions are to be substantially limited in major life activities.

Administrators should consider employees' future needs in devising accommodation plans if current mitigating measures are less effective in addressing their needs.

Districts should review and, if necessary, revise their policies annually to ensure they are up-to-date with changes in the law.

By reviewing the parameters of the ADA, school business officials and other education leaders should be able to avoid costly mistakes leading to unnecessary litigation that diverts funds from what should be their primary concern of educating children.

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