

## The ADA Amendments Act (ADAAA) Will Impact How School Districts Evaluate Section 504 Cases

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On September 25, 2008, President Bush signed the Americans with Disabilities Act Amendments Act (ADAAA, previously known as the Americans with Disabilities Restoration Act) into law. This new law overturns such cases as *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), which restricted ADA eligibility to many people with disabilities like diabetes, epilepsy, intellectual and developmental disabilities, muscular dystrophy, cancer, and many others. The ADAAA will take effect on January 1, 2009.

Although much of the discussion surrounding ADAAA has been limited to the employment setting, it is equally important in the school arena. Because the ADA and Section 504 define "disability" in a similar manner, the ADA case law and the ADAAA changes to the ADA are equally applicable to Section 504 cases. This Issue Alert describes the important changes that school districts will face:

- ***Sutton v. United Air Lines, Inc.*** The ADAAA overturns the United States Supreme Court's decision in *Sutton*, which held that people with disabilities were not eligible for ADA protection if their disabilities could be eliminated by mitigating measures, i.e., medications, assistive technology, or learned behavior modifications. As of January 1, 2009, a person must be evaluated for ADA eligibility in his or her unmitigated state.

Additionally, the ADAAA also overturns the *Sutton* holding that a disability must limit more than one major life activity; under the ADAAA, limitation of one major life activity is sufficient. The Amendment also clarifies the definition of "major life activities" to include, but are not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." "Major life activities" also includes major bodily functions such as "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

Although *Sutton* arose in the ADA context, the holding was equally applicable in the Section 504 context. As such, the ADAAA changes will apply to Section 504 cases.

- ***Toyota Motor Manufacturing, Kentucky, Inc. v. Williams.*** The ADAAA also rejects the standards expressed by the United States Supreme Court in *Toyota* that the terms "substantially" and "major" in the definition of disability "need to be interpreted strictly to create a demanding standard for qualifying as disabled" and that in order to be substantially limited in performing major life activities under the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives."

Congress expressed in the ADAAA that *Toyota* and lower courts applying the *Toyota* standard have created "an inappropriately high level of limitation necessary to obtain coverage under the ADA" and that by passing the ADAAA, Congress intends to convey its intent "that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations," and "that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis."

Again, although *Toyota* arose in the ADA context, its holding was applicable to Section 504 cases.

- **Equal Employment Opportunity Commission.** Likewise, the Equal Employment Opportunity Commission similarly defined "substantially limited" far too narrow. In short, the EEOC defined "substantially" as "substantially restricted." The ADAAA makes it abundantly clear that Congress never intended for the definition of "substantially limited" to mandate that the restriction be "significant" or "severe."

- **What does the ADAAA mean for school districts?** Notably for children with disabilities, the changes brought by the ADAAA will apply equally to Section 504 cases. The legislative intent makes it crystal clear that merely because a student with a particular learning disability can perform well academically does not necessarily mean that he or she may not also be substantially limited in the major life activities of learning, reading, writing, thinking, and speaking. Naturally, the student will still need to show that he or she is substantially limited in one or more of the above listed major life activities and that he or she is in need of a reasonable accommodation.

Additionally, the ADAAA will provide students that were previously denied Section 504 eligibility with protections going forward. For example, many school districts have denied 504 eligibility to students suffering from diabetes, epilepsy, life-threatening food allergies, ADHD, learning disabilities, and other disabilities because the students were able to control their disabilities through mitigating measures, e.g., medications. These same school districts may have

been informally and/or voluntarily accommodating these students with "near disabilities." Congress did not intend for students with disabilities who need accommodations to be dependent solely on the good will of school districts to provide the accommodation they need in order to learn. As of January 1, 2009, a child would be entitled to reasonable accommodations under Section 504, even though the child was previously denied a 504 plan because of a mitigating measure.

Of course, many students in the past received their accommodations under the Individuals with Disabilities Education Act (IDEA) and the ADAAA should not impact those students. It is this group of students not covered by the IDEA and that have historically been considered to not be disabled under the definitions of Section 504 that will be at issue going forward.

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