Special Education Law Blog

A special education legal resource discussing case law, news, practical advocacy advice, and developments in state and federal laws, statutes and regulations. Postings include insight and sometimes humor from Charles P. Fox, a Chicago, Illinois attorney and adjunct instructor at DePaul Law School's Special Education Clinic, who is also a parent of child with special needs, and other guest authors.

September 26, 2008

ADA Amendments Passed and Has Become Law!

The following is a posting from Jess Butler who is an attorney and officer with COPAA.org one of the leading special education advocacy organizations in the U.S. She has summarized and explained the effect of the new amendments for school age children and in later life. These revisions represent a win for people with disabilities.

Today (9-26-08), the ADA Amendments Act (ADAAA), S.3406, was signed into law. The ADAAA overturns a decade of jurisprudence that has barred the door to ADA eligibility for many people with disabilities, including epilepsy, diabetes, intellectual and developmental disabilities, muscular dystrophy, and cancer, among many others. The reforms in the law will apply to both the ADA and Section 504 of the Rehabilitation Act. The reforms will restore the intent of the bipartisan Congress that passed the ADA in 1990. At the same time, the bill is a compromise, as much legislation is. As you know, COPAA has worked in support of this important bill. The ADAAA will take effect in January 2009. COPAA will be providing more information about the ADAAA and its impact on Section 504 in the near future. We thank Senators Harkin and Hatch, and HELP Chair Senator Kennedy and Ranking Member Senator Enzi for their leadership in the Senate, and Majority Leader Steny Hoyer, Congressman George Miller, Congressman Buck McKeon, Congressman James Sensenbrenner and Congressman Jerry Nadler in the House.. We also thank the many members of Congress who supported the bill, and the broad coalition of disability and employer groups who worked so hard for its passage.

Below are more details on the ADAAA for those who are interested.

It is important to understand that the ADA and Section 504 define disability in a similar way, and therefore, ADA case law is applicable to 504 cases. Because the harmful ADA cases were also applicable to 504, the reforms apply to both laws. These reforms include the following highlights.

First, the ADAAA overturns in large part the Supreme Court's decision in Sutton v. United Airlines, which held that people with disabilities were not eligible under the ADA if their conditions could be mitigated by medication, assistive technology and equipment, or learned behavioral adaptations. The law also overturns Sutton's holding that a disability must limit more than one major life activity. Moreover, the bill will clarify that major life activities include working, communicating, concentrating, thinking, reading, and other activities of central importance. Although Sutton arose in the ADA context, its holding was equally applicable to 504 cases, and thus, the override is made applicable to 504..

When Congress passed the ADA in 1990, it intended to protect people whose disabilities "substantially" limit them from performing major life activities. But the Supreme Court in Toyota v. Williams interpreted this term very narrowly and turned into a barrier to ADA eligibility, requiring that the person be severely restricted in his/her ability to perform major life activities. The Equal Employment Opportunity Commission similarly defined the term as "significantly restricted." Again, although Toyota was an ADA case, its holding was also applicable to 504. The ADAAA overrides Toyota for both the ADA and 504. It states in its findings that the Supreme Court in

Toyota, and the EEOC in its regulations, set the standard too high by defining "substantially limited" to require that the restriction be "significant," or "severe." The Senate bill will thus restore the standard Congress intended—that the impairment simply be a substantial limitation. This finding is particularly important and we will be giving more guidance about it in the future. The ADAAA further states that the ADA must be interpreted to give full force and effect to these findings.

The ADAAA Statement of Senate Managers explains what "substantially limited" means, emphasizing the same language that Congress used in 1990:

A person is considered an individual with a disability for purposes of the first prong of the definition when [one or more of] the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort.

In addition to these reforms, the ADAAA removes from ADA's "regarded as" prong of the disability definition the requirement that an individual demonstrate that he or she has, or is perceived to have, an impairment that substantially limits a major life activity. There are other reforms in the bill, as well.

Like the House legislative history, the Senate legislative history makes clear merely because someone with a specific learning disability can perform well academically does not mean that he/she may not also be substantially limited in the major life activities of learning, reading, writing, thinking, and speaking. Of course, the person would still need to establish that he/she was substantially limited in this manner and that he/she needed reasonable accommodations. The legislative history also makes clear that the 11th Circuit in Littleton v. Wal-Mart Stores, Inc. was incorrect to decide that a person with mental retardation was not disabled because he could drive a car and communicate with words.

Importantly for children with disabilities, the ADAAA applies equally to 504. Unlike the situation with employment, most school districts appropriately applied the law to 504 eligibility questions, and accommodated a range of students with disabilities. Thus, the ADAAA will not make any substantial changes in what most districts already do. But the law provides an important remedy for those children who have inappropriately been denied 504 eligibility. COPAA had received reports of some school districts denying 504 eligiblity to children with diabetes, life-threatening food allergies, learning disabilities, ADHD, Aspergers Syndrome, and other disabilities. For example, one school district argued that because a 6yo with a life-threatening nut allergy could care for himself about as well as other 6yos, and because he could breathe just fine when not suffering from anaphylaxis, he wasn't substantially limited and didn't have a disability under 504. Other 504 situations involved children with disabilities who are unable to obtain 504 plans with appropriate behavioral supports and access to appropriately challenging school work.

In the ADAAA, Congress made clear that no child should have the door to 504 shut because of old, outdated ADA case law that a bipartisan consensus agreed should be changed. The ADA aspects of the ADAAA are also increasingly relevant as youth with disabilities transition from school into the world of employment. The ADAAA is a bipartisan law that represents a significant achievement in protecting the rights of children and adults with disabilities. Again, it will be effective in January 2009. Thus, if in January 2009, a child would be entitled to reasonable accommodations under 504, even though he previously was not because of a mitigating measure or he was not considered "substantially limited," the law will protect him. Further information about the law will be provided later and we are sure many organizations will be providing information.

You can retrieve the new law by going to www.congress.gov, and typing S.3406 into the search box. Select the bill that says S.3406.ENR. Here is the bill for upload download S3046aspassedGPO.pdf.

Posted by Charles Fox on September 26, 2008 at 01:47 PM in Special Education News | Permalink
Technorati Tags: ADA, new law

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Comments

My son has cerebral palsy (does not walk or stand independently) and a right arm atrophy from birth (which seriously limits his self help - dressing, writing, holding and opening things,etc.). We were denied the Katie Beckett Deeming Waiver twice because he was not "mentally retarded" and did not require 24 hour nursing care or wasn't a complete vegetable. In reading this law amendment, I can't tell if we are now more eligible because he does have a seriously life long limiting disability in PHYSICAL form but is still a bright and intelligent child. Can anyone clarify whether I should bother to reapply for Katie Beckett under this new amendment in January?

Posted by: Debbie Branan | September 27, 2008 at 08:03 AM
my son was sentenced to 29years in a california prison. at the time they did not know he was ADA is there anything that can be done. he has served 10yrs already.

Posted by: audrey jacobs | November 07, 2008 at 04:59 PM
The Deeming waiver is dependent on the the definition of disability according to Social Security: "You cannot do work that you did before; We decide that you cannot adjust to other work because of your medical condition(s); and Your disability has lasted or is expected to last for at least one year or to result in death." Likewise, there is the requirement that the individual must meet the criteria for nursing home placement. Finally that individual must not be eligible for SSI.

None of those requirements are really effected by the ADAAA. The waiver concerns medicaid eligibility not disability eligibility for employment or in 504 situations.

Posted by: M. Grenda | November 10, 2008 at 03:49 PM