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## School Districts- ADA Amendments Act to Become Law- How This Will Affect You

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### **ADA AMENDMENTS ACT TO BECOME LAW**

On Wednesday, September 17, 2008, the House of Representatives unanimously passed the Senate version of the **ADA Amendments Act of 2008** (S. 3406). The White House has since confirmed that this Act, which was introduced on July 31, 2008, and passed the Senate on September 11, 2008, **will be signed into law.**

This law, **effective January 1, 2009**, may be the most sweeping change to the face of discrimination law in the past 10 years. Essentially, the Act does away with a series of Supreme Court decisions that required courts to apply a "demanding standard" and to consider "mitigating measures" when determining whether an individual is "disabled." This set of decisions greatly reduced the number of persons who could be considered disabled and therefore protected under both the ADA and Section 504 of the Rehabilitation Act of 1973.

The ADA Amendments Act of 2008 specifically instructs courts and ADA-covered entities to reject the Supreme Court standard and, instead, adopt a "broad standard" when deciding whether an individual is "disabled." While the Act does not define this new broad standard, it does state that with the exception of "ordinary eyeglasses and contact lenses," **ADA-covered entities can no longer consider the ameliorative effect of "mitigating measures"** in determining whether someone has a disability. Other highlights include an expanded definition of the term "major life activity" and a clarification that even impairments that are "episodic or in remission" can be considered disabilities if they substantially limits a major life activity "when active." A full copy of the Act can be found at <http://thomas.loc.gov/cgi-bin/query/z?c110:S.3406>.

In sum, the new law will make it much harder for ADA-covered entities to take the position that a given individual is not "disabled" within the meaning of the ADA or Section 504. This means that more reasonable accommodation requests, as well as more discrimination charges and lawsuits, can be expected. For school districts, in particular, this means that **more students may qualify for Section 504 plans.**

It is anticipated that the Equal Employment Opportunity Commission and the Department of Education's Office for Civil Rights will issue regulatory guidance addressing the definition of "disability" in the coming year. In the meantime, school districts should work to ensure that human resources and operations management are informed of the ADA amendments and that they are erring on the side of caution when determining whether to provide a requested accommodation. Likewise, districts should work to ensure that their 504 Coordinators are up-to-date and that their 504 evaluation process is tailored to comply with a broader definition of "disability."

If you have any questions or would like additional information or assistance in reviewing your accommodation policies and procedures (including your 504 procedures), please contact Alyssa Burghardt at **(303) 443-8010**.

 

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