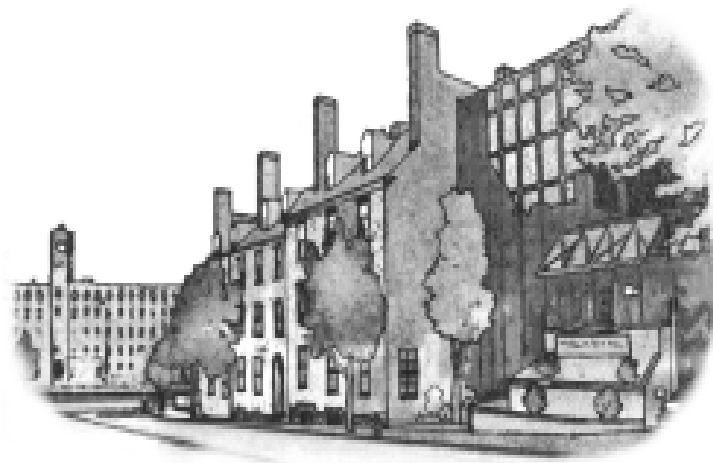


# **A Brief Overview of the ADA Amendments Act of 2008**

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### A Word of Caution

This material is designed to provide educators with a brief overview of the ADA Amendments Act of 2008. This material does not include every aspect of the law. You are strongly encouraged to seek a legal opinion from your school district's legal counsel regarding any specific case. These amendments took effect on **January 1, 2009**.

## **I. Overview**

The purpose of this material is to provide educators with a brief overview of the ADA Amendments Act of 2008. These amendments took effect on **January 1, 2009**. This material is not intended to substitute for legal counsel nor is it intended to provide an exhaustive statement of the American's with Disabilities Act ("ADA"), the ADA Amendments of 2008, or the Rehabilitation Act of 1973 ("Section 504").

## **II. The ADA Amendments Act of 2008**

The ADA Amendments Act of 2008 was signed by the President on September 25, 2008. As with most laws, the ADA Amendments Act contained a future date upon which it goes into effect; the Act took effect on **January 1, 2009**.

### **A. Findings and Purposes**

#### **1. Congressional Findings (Section 2)**

The findings section of the ADA Amendments Act of 2008 provides a window into the Congressional intent in amending the ADA. The Congressional findings in the ADA Amendments Act of 2008 are:

- In enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act 'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage;
- In enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;
- While Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;
- The holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be

afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

- The holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;
- As a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;
- In particular, the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term 'substantially limits' to require a greater degree of limitation than was intended by Congress; and
- Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term 'substantially limits' as significantly restricted' are inconsistent with congressional intent, by expressing too high a standard.

## 2. Statement of Purpose

The statement of purpose provides assistance with regard to understanding the district's obligations under the ADA (and Section 504). The stated purposes are:

- To carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection to be available under the ADA;
- To **reject the requirement** enunciated by the Supreme Court in *Sutten v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases **that whether an impairment substantially limits a major life activity is to be determined with reference to ameliorative effects of mitigating measures**;
- To reject the Supreme Court's reasoning in *Sutten v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to

**reinstate** the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a **broad view of the third prong of the definition of handicap** under the Rehabilitation Act of 1973;

- To **reject** the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), **that the terms ‘substantially’ and ‘major’** in the definition of disability under the ADA **‘need to be interpreted strictly to create a demanding standard for qualifying as disabled,’** and **that to be substantially limited in performing a major life activity** 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’;**
- To convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for ‘substantially limits’, and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is **the intent of Congress 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 to convey that the question of **whether an individual’s impairment is a disability** under the ADA **should not demand extensive analysis;** and
- To express Congress’ expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term ‘substantially limits’ as ‘significantly restricted’ to be consistent with this Act, including the amendments made by this Act.

(emphasis added).

## **B. Amendments to the Rehabilitation Act of 1973 (Section 7)**

Section seven of the ADA Amendments Act of 2008 amends two definitions in the Rehabilitation Act of 1973. The amendments are:

- The definition of disability (29 U.S.C. 705(9)(B)) was amended to have “the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)”

- The term “individual with a disability” (29 U.S.C. 705(20)(B)) was amended to state “any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).”

Thus, as of January 1, 2009, for purposes of defining the terms “disability” and “individual with a disability” under the Rehabilitation Act, it became necessary to look to the ADA.

### C. Amended Definitions (Section 3)

Section 3 of the ADA Amendments Act of 2008 contains the following definitions:

- “The term ‘disability’ means, with respect to an individual
  - A physical or mental impairment that substantially limits one or more major life activities of such individual;
  - A record of such an impairment; or
  - Being regarded as having such an impairment (as [defined] in paragraph (3)).”

The following terms, relating to the definition of disability, have also been amended:

- Major Life Activities, means:
  - “For purposes of [the definition of disability], major life activities 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.
  - . . . for purposes of [the definition of disability], a major life activity also includes the **operation of a major bodily function**, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”
- Regarded as having such an impairment:

- “An individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an **actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.**”
- For the purposes of defining the term “disability,” an individual is **not “regarded as having such an impairment” if the impairment is “. . . transitory and minor.** A transitory impairment is an impairment with an actual or expected **duration of 6 months or less.**”

(emphasis added).

In addition, the ADA Amendments Act contains the following “Rules of Construction Regarding the Definition of Disability,” and states that the “definition of ‘disability’ . . . shall be construed in accordance with the following:

- The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.
- The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
- An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- An impairment that is **episodic or in remission is a disability if it would substantially limit a major life activity when active.**
- The determination of **whether an impairment substantially limits a major life activity** shall be made **without regard to the ameliorative effects of mitigating measures** such as –
  - **medication**, medical supplies, equipment, or appliances, **low-vision devices (which do not include ordinary eyeglasses or contact lenses)**, prosthetics including limbs and devices, **hearing aids and cochlear implants or other implantable hearing**

**devices**, mobility devices, or oxygen therapy equipment and supplies;

- use of assistive technology;
  - reasonable accommodations or auxiliary aids or services; or
  - learned behavioral or adaptive neurological modifications.
- The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
    - The term “ordinary eyeglasses or contact lenses’ means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
    - the term ‘low vision devices’ means devices that magnify, enhance, or otherwise augment a visual image.”

(emphasis added).

The Act also defines the term “auxiliary aids and services,” as “includ[ing]:

- qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
- acquisition or modification of equipment or devices; and
- other similar services and actions.

#### **D. Impact on School Districts and Children**

The revisions to the definitions, which are explicitly made applicable to the Rehabilitation Act, will have an impact on disability determinations. The determination of whether a student has a disability under Section 504 will still involve the following inquiries:

- Does the student have:
  - A physical or mental impairment that substantially limits one or more major life activities of such individual; or
  - A record of such an impairment; or
- Has the student been regarded as having such an impairment.

However, the nuances of those inquiries will expand as of January 1, 2009. For example, the definition of major life activities has been expanded, and now includes (among other items): eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.

Although the term “substantially limits” is not defined, we do know that Congress intended for it to be interpreted without regard to the impact of mitigating measures (except for eyeglasses and contact lenses) and that it was intended to “preven[t] or severely restrict[t] [an] individual from” performing a major life activity. Thus, a child with a visual impairment that substantially limits the child’s ability to read would be a child with a disability under Section 504 and the ADA, regardless of whether low vision devices ameliorate the impact of the child’s impairment.

Although not set forth in the Act, low vision devices include: magnifying devices, closed circuit television, large print items, instruments that provide voice instruction or information (computers, clocks, timers, calculators, scales, key chains), and larger, illuminated watches and clocks, writing guides. See University of Virginia Health System, [http://www.healthsystem.virginia.edu/uvahealth/adult\\_eye/lowvis.cfm](http://www.healthsystem.virginia.edu/uvahealth/adult_eye/lowvis.cfm) (last modified Feb. 12, 2004, accessed Oct. 6, 2008).

The ADA Amendments Act of 2008 does not impact the substantive portions of the Rehabilitation Act, such as the duty to provide qualified students with disabilities with an equal opportunity to participate in a Free Appropriate Public Education, inclusion in extra-curricular activities, the provisions pertaining to discipline, and procedural safeguards.