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Accommodating School Employees with Disabilities under the Americans with Disabilities Act

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In the past decade, employee complaints alleging disability discrimination have increased nationally by over 80 percent.[1] Because of the 2008 amendments to the Americans with Disabilities Act that expanded the definition of "disability," the criteria one must meet to qualify for coverage under the ADA has been significantly relaxed. According to a recent study, in 2015, the employment rate of working-age people ages 21 to 64 with disabilities in the United States was 35.2 percent.[2] The expanding number of individuals with disabilities in the workforce will continue to lead to more requests for workplace accommodations, and, most likely, more complaints and lawsuits. In fact, in 2016, of the 114 lawsuits filed by the EEOC, almost a third of them involved claims under the ADA.[3] Thus, more than ever, school districts must ensure that administrators and other supervisors are properly trained to assist employees seeking workplace accommodations on their respective campuses. This paper will provide a brief review of the ADA's legal framework and will provide guidance regarding a school district's obligations when an employee seeks an accommodation at work.

A Refresher on the ADA

In 2011 and 2016, the EEOC published final regulations implementing legislative amendments to the Americans with Disabilities Act.[4] The purpose of the amendments was to un-do the effect of several Supreme Court decisions that Congress believed had diminished the ADA. Prior interpretations of the law created a "catch-22" for disabled employees: if they used medication, medical aids, or behavioral adaptations to improve their functioning, they were no longer considered "disabled" under the law.[5] The adoption of the amendments now "make it easier" for individuals to receive the protection of the ADA.[6]

Under the prior law, courts focused on whether the employee was "substantially" limited in a major life activity and whether the employee's impairment precluded him or her from working in a broad range of activities. Additionally, in determining whether a person was disabled, courts looked at whether the employee's condition or functioning was improved by the use of medication or other aids. Under the current law, one will no longer consider the

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1 *See* EEOC, Americans with Disabilities Act of 1990 (ADA) Charges, *available at* https://www.eeoc.gov/eeoc/statistics/enforcement/ada-charges.cfm.

2 Erickson, W., Lee, C., & von Schrader, S. (2016). 2015 Disability Status Report: United States. Ithaca, NY: Cornell University Yang Tan Institute on Employment and Disability (YTI).

3 EEOC Litigation Statistics, FY 1997 thru FY 2016, *available at* https://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm.

4 42 U.S.C. § 12101 et seq.

5 EEOC Appendix to Part 1630, Federal Register, Vol. 76, No. 58 at 17009 (March 25, 2011).

6 *See* Federal Register, Vol. 76, No. 58 at 17000 (March 25, 2011); Federal Register, Vol. 79, No. 20 at 4840 (Jan. 30, 2014), *available at* https://www.gpo.gov/fdsys/pkg/FR-2014-01-30/pdf/2014-01668.pdf.

beneficial effect of "ameliorative effects of mitigating measures" to determine whether an employee is disabled.[7] Thus, for example, an employee who successfully uses medication to control high blood pressure will still qualify as "disabled."

A person is protected under the ADA if he or she has a physical or mental impairment that "substantially" limits one or more "major life activities." According to the regulations, the definition of "substantially" is construed "broadly in favor of expansive coverage" and it is not intended to be a "demanding" standard."[8] An individual "need not have an impairment that prevents or significantly or severely restricts the individual from performing a major life activity." [9] Impairments will be covered even if they are episodic in nature or in remission; the key inquiry is whether the impairment *when active* substantially limits the employee.[10] Likewise, the term "major life activity" includes several additional activities, such as "interacting with others." [11] An activity constitutes a major life activity even if it is not of central importance to the individual's life.[12] In addition, the law also sets forth a category of impairments that will "virtually always" be found to impose a substantial limitation on a major life activity: deafness, blindness, intellectual disability (formerly known as mental retardation), missing limbs, mobility impairments, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV or AIDS, multiple sclerosis, muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.[13] Thus, the primary attention in cases brought under the ADA is now whether a school district has complied with its obligations and whether discrimination has occurred, not whether the individual's impairment substantially limits a major life activity.[14]

It is also important to note that the ADA continues to protect individuals who are not actually disabled but who have a "record of" having an impairment, such as an individual who was treated for breast cancer in the past or an individual who has severe facial scars.[15] An employee also may be protected if he or she is "regarded as" disabled by the employer.[16] Importantly, a person who is "regarded as" disabled, but is not actually disabled, will not be entitled to a reasonable accommodation. [17] However, such an individual will still be able to sue if he is mistreated because the employer regards him as disabled.[18] Thus, it is essential that school districts train their employees on the ADA

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7 29 C.F.R. 1630.2(j)(1)(vi).

8 29 C.F.R. 1630.2(j)(1)(i).

9 29 C.F.R. 1630(j)(1)(ii); *see, e.g.*, *Neely v. Benchmark Family Servs.*, 640 Fed. Appx. 429, 435 (6th Cir. 2016) (finding that the 2008 amendments undoubtedly eased the burden required for plaintiffs to establish the substantially limitation prong).

10 29 C.F.R. 1630.3(j)(1)(vii).

11 The definition includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. The definition now also includes the operation of a "major bodily *function*," including the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. 29 C.F.R. 1603.2(i).

12 *See, e.g.*, *Cannon v. Jacobs Field*, 813 F.3d 536 (5th Cir. 2016).

13 29 C.F.R. 1630.2(j)(3)(iii).

14 29 C.F.R. 1630.2(j)(1)(iii).

15 29 C.F.R. 1630.2(g)(1)(ii).

16 29 C.F.R. 1630.2(g)(1)(iii).

17 29 C.F.R. 1630.2(o)(4).

18 29 C.F.R. 1630.4.

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