

ADA Amendments Act of 2008

Questions & Answers

Q. When does the Act become effective?

A. The Act becomes effective January 1, 2009.

Q. What is the purpose of the Amendments?

A. The purpose “is to restore the intention and protections of the Americans with Disabilities Act of 1990, providing a clear and comprehensive national mandate for the elimination of discrimination on the basis of disability.” H.R. REP. NO. 110-730, pt. 1, at 4 (2008).

Q. What intention and protections need restoration?

A. The ADA “intends that the establishment of coverage under the ADA should not be overly complex nor difficult, and expects . . . [to] lessen the standard of establishing whether an individual has a disability for purposes of coverage under the ADA.” *Id.* at 9.

Q. What is the source of this information?

A. House Report 730, from the Committee on Education and Labor, explains the new definition of disability, the new terms, and interpretations. See H.R. REP. NO. 110-730. Many changes are discussed below.

Q. How is the term “substantially limits” interpreted differently?

A. The term substantially limits is to be interpreted to mean “materially restricts.” *Id.* at 9. This means more than a moderate limitation. *Id.* at 10. The impairment itself does not have to be severe. *Id.* “The level of the restriction created by the impairment must be the determining factor. . . . For example, an individual with mild mental retardation (intellectual disability) would be considered materially restricted in the major life activities of learning and thinking.” *Id.*

Q. How are multiple impairments interpreted?

A. If they “combine to materially restrict a major life activity”, then they would constitute a disability under the Act. *Id.* at 10.

Q. How are specific learning disabilities interpreted?

A. The Act considers that major life activities such as learning, reading, writing, thinking, or speaking may be substantially limited by specific learning disabilities. *Id.* at 10.

Q. A student who is performing well academically is not covered, right?

A. Stakeholders should consider “the condition, manner or duration in which an individual with a specific learning disability performs a major life activity. *Id.* at 10. A student “who performs well academically or otherwise can be substantially limited in activities such as learning, reading, writing, thinking, or speaking. *Id.* Specific learning disabilities are neurologically-based. *Id.* Dyslexia is one example. *Id.* at 11.

Q. Since the Amendments add to the list of major life activities, is it all inclusive?

A. No. The list is meant to be illustrative and not exhaustive. *Id.* at 11. For example, “[o]ther activities the Committee considers to be examples of major life activities include interacting with others, writing . . . drinking, chewing, swallowing, reaching, and applying fine motor coordination.” *Id.* at 11. Similarly, the list of major bodily functions is not exhaustive. *Id.* There is no negative implication as to whether non-listed items are covered under the Act. *Id.*

Q. If a person has an impairment that affects some tasks but not other tasks, is the person covered under the Act?

A. Yes. Only one major life activity needs to be substantially limited. *Id.* at 12. Substantial limitation is not offset by the ability to perform other tasks. *Id.*

Q. Is a student covered if the student uses mitigating measures to ameliorate the student's impairment?

A. Mitigating measures such as low vision devices, compensatory strategy, or a personal assistant does not disqualify one from coverage if the impairment is present without the mitigating measure. *Id.* at 15.

Q. Can the effect of medication be taken into account in hidden disabilities such as ADHD, depression, and diabetes?

A. No. Even if the medication completely mitigates the impairment, the individual is still covered under the Act. *Id.* at 16.

Q. What is the relationship between the ADA Amendments and the Rehabilitation Act of 1973?

A. "The Rehabilitation Act of 1973 preceded the ADA in providing civil rights protections to individuals with disabilities [T]he authors relied on the statute and implementing regulation of the Rehabilitation Act." *Id.* at 19.

Q. What is the implication for schools?

A. "The ADA, under Title II and Title III, and Section 504 of the Rehabilitation Act provide overlapping coverage for many entities, including public schools, institutions of higher education, childcare facilities, and other entities receiving federal funds." *Id.* at 19.

Q. What is staying the same?

A. The Act does not contemplate a change to the definition of "physical impairment" or "mental impairment" as used in regulations provided by the Department of Justice (DOJ) and the Department of Education Office of Civil Rights (DOE OCR) and the U.S. Equal Employment Opportunity Commission (EEOC). *Id.* at 9.

Q. When will new regulations be available?

A. "The Committee expects that the Secretary of Education will promulgate new regulations related to the definition of disability to be consistent with those issued by the Attorney General under this Act. Other current regulations issued by the Department of Education Office of Civil Rights under Section 504 of the Rehabilitation Act are currently harmonious with Congressional intent under both the ADA and the Rehabilitation Act." *Id.* at 19.