



LINDABURY

McCORMICK, ESTABROOK & COOPER, P.C.

Attorneys at Law

EdLawAlert

By the EdLaw Group at Lindabury

January 15, 2009

The EDUCATION LAW GROUP at Lindabury has extensive experience in the area of school law. We serve as general counsel, special education counsel, and labor counsel for boards of education throughout the State.

ANTHONY P. SCIARRILLO
ATHINA LEKAS CORNELL
JEFFREY R. MERLINO
ISABEL MACHADO
DENNIS MCKEEVER
LISA M. GINGELESKIE
JENNIFER A. OSBORNE

edlawgroup@lindabury.com

Westfield Office

P. O. Box 2369
53 Cardinal Drive
Westfield, NJ 07091
(TEL) 908-233-6800
(FAX) 908-518-2967

Summit Office

480 Morris Avenue
Summit, NJ 07901
(TEL) 908-273-1212
(FAX) 908-273-8922

Rumson Office

20 Bingham Avenue
Rumson, NJ 07760
(TEL) 732-741-7777
(FAX) 732-758-1879

www.lindabury.com

ADA Amendments Call for Broader Interpretations of Disability

By Athina Lekas Cornell, Esq.

Effective since January 1, 2009, amendments to the Americans with Disabilities Act (“ADA”) broaden protection to disabled individuals. These amendments also revise the interpretation of who is to be determined disabled under Section 504 of the Rehabilitation Act (“Section 504”).

Section 504 mandates that schools must provide a free appropriate public education to students with disabilities through the implementation of an individualized education program. A free appropriate public education requires school districts to provide some students with services so they can receive an education equal to that of a non-disabled student.

The ADA and Section 504 define a disability as a record of or the student is regarded as having a “physical or mental impairment that substantially limits one or more major life activities.” Prior to the amendments, major life activities were interpreted narrowly. Notably, in a 1999 Supreme Court decision, the Court held that if one’s conditions could be mitigated by medication, assistive technology or equipment, or learned behavioral adaptations, one would not be considered disabled according to the ADA’s definition. This also applied to Section 504 determinations. The same case also held that a disability must limit more than one major life activity.

The ADA amendments now call for broader interpretations of substantially limiting impairments. The amendments specify that 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.” The amendments also expand the interpretation of major life activities to the operation of major bodily functions, “including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” Moreover, an episodic impairment or an impairment in remission shall be considered a disability if it would substantially limit a major life activity when active. (cont’d ➔)

Additionally, the amendments state that an impairment substantially limiting one major life activity may be sufficient to qualify as a disability.

Furthermore, the amendments instruct that an impairment substantially limits an individual's major life activities without regard to mitigating measures. This Congressional act overrules the Supreme Court's decision that mitigating factors should be taken into account in determining if an individual is disabled. However, the amendments exclude ordinary eyeglasses or contact lenses from this provision, and therefore, these should be included in Section 504 determinations.

School districts have generally interpreted disabilities more broadly than the Supreme Court or the private sector. Therefore, major adjustments to school districts' policies and practices may not be required. Presently, the Office of Civil

Rights is reviewing the effect the ADA amendments will have on Section 504 and evaluating whether changes are necessary to publications or regulations as a result of the amendments. Until findings are publicized, it is uncertain whether the ADA amendments will substantively impact school districts under Section 504. However, school districts should review their present evaluation and placement procedures to ensure compliance with the revised definition. Section 504 issues should be carefully scrutinized for compliance with the broader interpretation of the law.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Athina Lekas Cornell of the EdLaw Group at edlawgroup@lindabury.com.



www.lindabury.com

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.

You may, if this letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 037, Trenton, NJ 08625.