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## CHANGES TO ADA REGULATIONS GO INTO EFFECT ON OCTOBER 11, 2016

On August 11, 2016, the United States Department of Justice published a final rule in the Federal Register revising the Americans with Disabilities (ADA) regulations. The new revisions apply to Title I (employment), Title II (state and local governments), and Title III (public accommodations) of the ADA. The revisions further expand the definition of “disability.” In announcing the revised regulations, the head of the Justice Department’s Civil Rights Division, Vanita Gupta, stated, “This final rule clarifies Congress’ original mandate that eliminating discrimination against people with disabilities requires an expansive definition of what disability means and who the law covers.”

Congress passed amendments to the ADA in 2008 in response to Supreme Court decisions that narrowly interpreted the ADA’s definition of disability. The 2008 Amendments Act broadened the definition of disability to ensure that all people with disabilities would receive the protections and rights of the ADA.

Although the Justice Department is claiming to align the existing revisions with the 2008 Amendments Act, the new regulations actually *surpass* Congress’ actions. In the new regulations, the Justice Department is attempting to provide even more individuals with federal protection. Both The definition of both “disability” and “substantially limits” has been expanded. The Justice Department now mandates that the term “disability” be interpreted broadly and the determination of whether an individual’s impairment qualifies under the ADA should not be subject to extensive analysis.

The revisions include newly created “rules of construction.” The rules, which follow, are to be applied when a determination needs to be made as to whether an impairment substantially limits a major life activity:

“Substantially limits” must be construed broadly in favor of expansive coverage;

The primary issue in a case brought under the ADA should be whether an entity has complied with its obligations and whether discrimination has occurred (not the extent to which the individual’s impairment substantially limits a major life activity);

- “Substantially limits” shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for “substantially limits” applied prior to the ADA Amendments Act;
- The comparison of an individual’s performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence;
- The ameliorative effects of mitigating measures other than ordinary eyeglasses or contact lenses shall not be considered in assessing whether an individual has a disability;
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment; and
- The burden is on the entity to establish that, objectively, an impairment is “transitory and minor” to not be covered by the ADA.

The “rules of construction” will likely lead to more individuals qualifying for the protections afforded under the ADA. It is

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imperative for school districts to understand the changes to the ADA regulations and ensure that its staff is trained in the changes to ensure compliance.

The regulations go into effect on October 11, 2016.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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