



## **U.S. Department of Education Offers Guidance on ADA Amendments**

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By **Jennifer Smith**

The Department of Education issued a **Dear Colleague letter** and **Frequently Asked Questions document** providing guidance for elementary and secondary schools on the requirements of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504). The guidance addresses changes to the ADA and Section 504 made by the ADA Amendments Act of 2008 (the Amendments Act), which became effective on January 1, 2009.

The new guidance emphasizes that under the Amendments Act, the threshold for qualifying as a student with a disability is now less restrictive. Accordingly, more emphasis should be placed on determining appropriate services, accommodations and modifications and less focus should be placed on whether a student is “disabled.” The guidance clarifies that if a student with a disability does not need services, accommodations or modifications, then no additional support is required. Nevertheless, the student remains protected by the nondiscrimination provisions of the ADA and Section 504.

The new guidance also emphasizes the importance of providing parents with procedural safeguards throughout the identification, evaluation, and educational placement process. For example, if a school district determines that a student with a disability is not in need of any services, accommodations or modifications, then the guidance states that the parents must be informed of that decision, allowed to examine the child’s records, and permitted to request an impartial hearing to challenge the decision.

Lastly, the guidance notifies school districts that have not updated policies and procedures since the Amendments Act became effective that there are significant changes and old practices may not suffice. Specifically, the guidance notes that the use of a health plan developed prior to the Amendments Act will not necessarily comply with the current requirements. School district should ensure that they have updated policies, procedures, and practices consistent with the new requirements.

### **More Information**

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