

# Fact Sheet

## 504 Plan Eligibility

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504 Plans provide services, accommodations and modifications so that students with disabilities receive 'equal access' to a free and appropriate education from schools that receive federal funding.

On January 1, 2009 the Americans with Disabilities Amendments Act of 2008 became effective. This Act "amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability."<sup>2</sup>

Following is a brief description of important information regarding eligibility for 504 Plans, emphasizing changes to the law most significant to parents of children with Tourette syndrome and their school districts.

### 1. 'Major Life Activity' List

For a student to be found eligible for a 504 Plan, it must be demonstrated that the student's symptoms substantially limit a 'major life activity'.

- The Act restores the original definition of 'disability' intended by Congress to "*substantially*" (*actually, truly*) limits a major life activity instead of the wording "*significantly*" (*of utmost importance*) limits a major life activity which some schools are incorrectly using.
- 'Major life activities', as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. With these amendments, Congress provided additional examples of major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. They make it clear that this list is not exhaustive and other functions can be major life activities for purposes of Section 504.

### 2. Inconsistent Symptoms

The law now states "that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."<sup>2</sup>

### 3. Disability Can Impact One Major Life Activity

An impairment may limit only one major life activity and still be considered a disability. As an example, a student who has difficulty with written 'communication' may still qualify as having a disability even if he/she does well academically and it does not impact 'learning'.

### 4. Symptom Management and 'Mitigating Measures'

A student may still qualify for a 504 Plan even when the symptoms are being managed with medication, specific strategies, or undocumented supports.

## **5. Is Student Demonstrating Ability?**

Many students are mistakenly denied eligibility because of their above average grades and/or high achievement assessment scores. Section 504 states that students can be found to be eligible, "regardless of their intelligence", if the disability results in students being "unable to fully demonstrate their ability".<sup>1</sup>

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The language of the original law states: *"No otherwise qualified individual with a disability in the United States . . . shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ."*

The Americans with Disabilities Amendments Act of 2008 clarifies the original intent by stating: *"The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA."*<sup>2</sup> The Act *"emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis."*

## **IMPORTANT: THIS PAPER IS MEANT ONLY AS A FACT SHEET.**

We encourage people to refer to the links below for additional information. The first provides a summary of the changes and answers to frequently asked questions regarding 504 Plans. The second link is the actual new amendment. The last two links provide more in depth information regarding these major changes and how they impact students with TS.

## **RESOURCES**

(NOTE: Quotes for this article were taken directly from the first two government sources listed below.)

1. <http://ed.gov/about/offices/list/ocr/504faq.html>
2. <http://www.access-board.gov/about/laws/ada-amendments.htm>
3. *Important Changes Regarding Eligibility for 504 Plans:* [http://tsa-usa.org/educ\\_advoc/chg\\_elig\\_504.htm](http://tsa-usa.org/educ_advoc/chg_elig_504.htm)
4. TSA Education Audio Conference: Eligibility Changes to 504 Plans: [http://tsa-usa.org/educ\\_advoc/audio\\_conferenceTSA.htm#elig\\_chg\\_504](http://tsa-usa.org/educ_advoc/audio_conferenceTSA.htm#elig_chg_504)

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