



Title II Training

Presented by: Holly Boyd Wardell
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Holly is a Shareholder in our Austin office.

Holly is licensed to practice law in all Texas state courts; the United States District Courts for the Northern, Eastern, Southern, and Western Districts of Texas; the United States Court of Appeals for the Fifth Circuit; and the United States Supreme Court.

She is a member of the Austin Bar Association, National School Boards Association Council of School Attorneys; School Law, Litigation, Administrative and Public Law, and Labor and Employment Law sections of the Texas Bar, Texas Council of School Attorneys, and the Texas Association of Defense Counsel. Holly has also served on the State Bar's Disabilities Issues Committee and the Texas Education Agency's State Supervision Committee & Complaints Management System. Holly graduated cum laude from Texas Wesleyan University in 1992 and earned her Juris Doctorate from The University of Texas School of Law in 1996.

Holly has an impressive litigation background in whistleblower cases and civil rights cases including gender, race, and national origin, and disability discrimination claims. Her work on position statements, motions, and briefs has resulted in numerous victories for school districts at every level conceivable. Additionally, she regularly attends ARD and Section 504 Committee meetings and represents clients at due process hearings.

Holly's outgoing personality, enthusiasm, and thoroughness combine to make her a popular lecturer. She is a frequent guest speaker for school districts, regional education service centers, special education cooperatives, state organizations, and universities on a variety of topics related to school law, including special education, Section 504, education records, sexual harassment, student discipline, and search and seizure. Holly has published numerous articles for state and firm publications on special education and other issues.

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Title II

Americans with Disabilities Act

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Americans with Disabilities Act (ADA) 1990

The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. The ADA is divided into five titles (or sections) that relate to different areas of public life.

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Enforced by the Office for Civil Rights

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

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Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools

In responding to requests for technical assistance, the Office for Civil Rights (OCR) has determined that school officials would benefit from additional guidance concerning the effects of the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act) on public elementary and secondary programs. The following questions and answers provide this guidance.¹

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

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ADAAA 2008



Q2: What is the Amendments Act?

A: The Amendments Act was signed into law in September 2008 and became effective on January 1, 2009.³ Congress passed the Amendments Act in part to supersede Supreme Court decisions that had too narrowly interpreted the ADA's definition of a disability. As members of Congress explained, "The ADA Amendments Act rejects the high burden required [by the Supreme Court] and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive. It is the intent of the legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended . . ."⁴

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

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ADAAA 2008

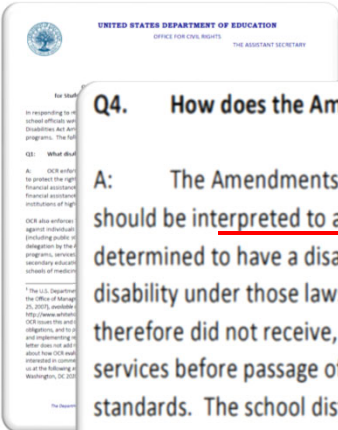


The Amendments Act not only amends the ADA but also includes a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. 29 U.S.C. § 705(20)(B).⁵ All persons covered by Section 504 or Title II are protected from discrimination under the general nondiscrimination regulatory provisions implementing these statutes, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment. 28 C.F.R. pt. 35; 34 C.F.R. §§ 104.4, 104.21-23, 104.61 (incorporating 34 C.F.R. § 100.7(e)). The Amendments Act does not alter the school district's substantive obligations under Section 504 or Title II. Rather, as discussed further in Q4, it amends the ADA and Section 504 to broaden the potential class of persons with disabilities protected by the statutes.

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

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ADAAA 2008



Q4. How does the Amendments Act alter coverage under Section 504 and Title II?

A: The Amendments Act emphasizes that the definition of “disability” in Section 504 and the ADA should be interpreted to allow for broad coverage. Students who, in the past, may not have been determined to have a disability under Section 504 and Title II may now in fact be found to have a disability under those laws. A student whom a school district did not believe had a disability, and therefore did not receive, as described in the Section 504 regulation, special education or related services before passage of the Amendments Act, must now be considered under these new legal standards. The school district would have to evaluate the student, as described in the Section 504 regulation, to determine if he or she has a disability and, if so, the district would have to determine whether, because of the disability, the student needs special education or related services. 34 C.F.R. §§ 104.3(l), 104.33.

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

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Individual with a Disability

Mental or physical impairment that substantially limits a major life activity



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Mitigating Factors Not Considered

- In the phrase “a physical or mental impairment that substantially limits a major life activity,” the term “substantially limits” shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). Mitigating measures are things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment. These measures cannot be considered when determining whether a person has a substantially limiting impairment. Therefore, impairments that may not have previously been considered to be disabilities because of the ameliorative effects of mitigating measures might now meet the Section 504 and ADA definition of disability. For example, a student who has a hearing impairment that is substantially limited by a hearing aid would be covered under Section 504 and Title II if, without the aid, the hearing would be substantially limited. (See also discussion of evaluation requirements at 11-14 below.)

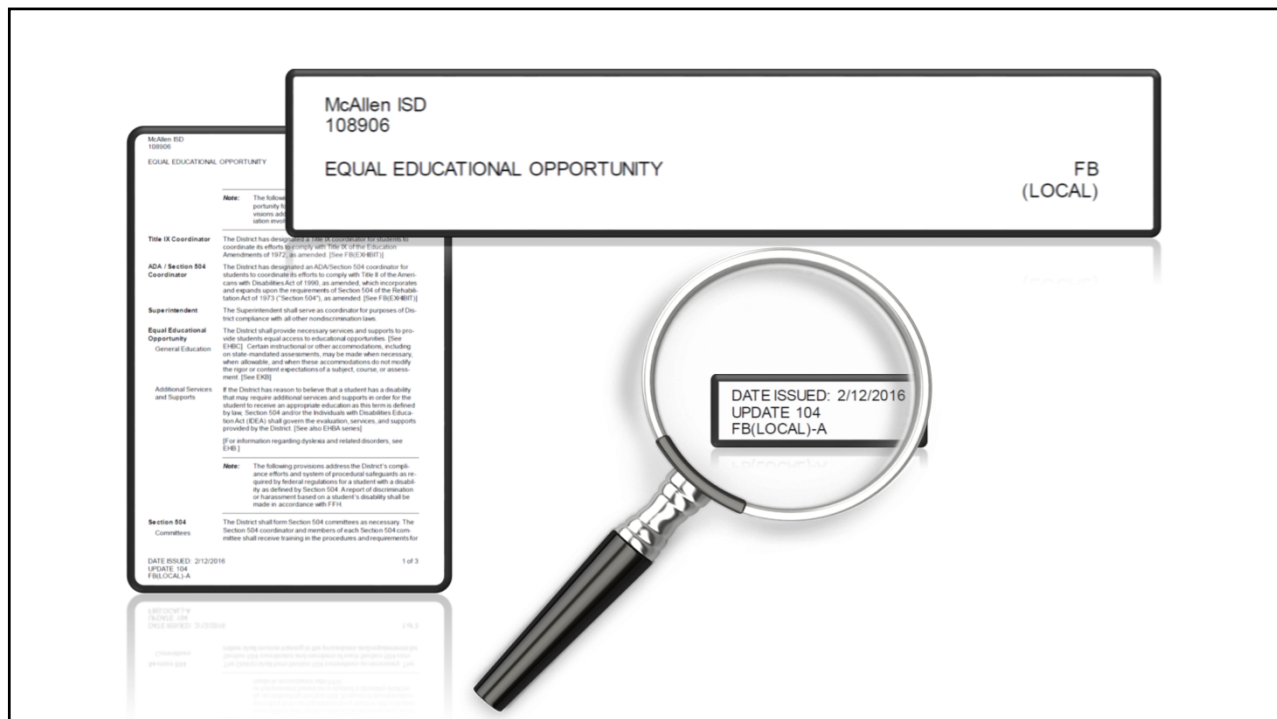
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Policies

Q5: Should a school district revise its policies and procedures regarding the determination of coverage and provision of services under Section 504 and Title II?

A: Yes, if those policies and procedures do not implement the Amendments Act’s new legal standards. As noted above, the definition of disability is to be interpreted broadly, so determining whether one has a disability should not demand extensive analysis, and the determination shall be made without regard to the ameliorative effects of mitigating measures. If a district determines that a student has a disability under these new legal standards, it must also evaluate whether, because of the disability, the student needs special education or related services as described in the Section 504 regulation. The school district must also determine whether additional requirements are implicated under Section 504 or Title II. If a district failed to implement the changes made by the Amendments Act, that district may be unlawfully denying Section 504 or Title II coverage to students.

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Reminder of Responsibilities

- Under . . . Title II of Americans with Disabilities Act
- Harassment
- July 25, 2000



<https://www2.ed.gov/about/offices/list/ocr/docs/disabarassltr.html>

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Harassment Violates Title II

Disability Harassment May Deny a Student an Equal Opportunity to Education under Section 504 or Title II

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program. Examples of harassment that could create a hostile environment follow.

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Harassment Examples



Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.

- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.⁷

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Harassment Examples



• A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required related to the student's disability.

• A professor repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.

• Students continually taunt or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.

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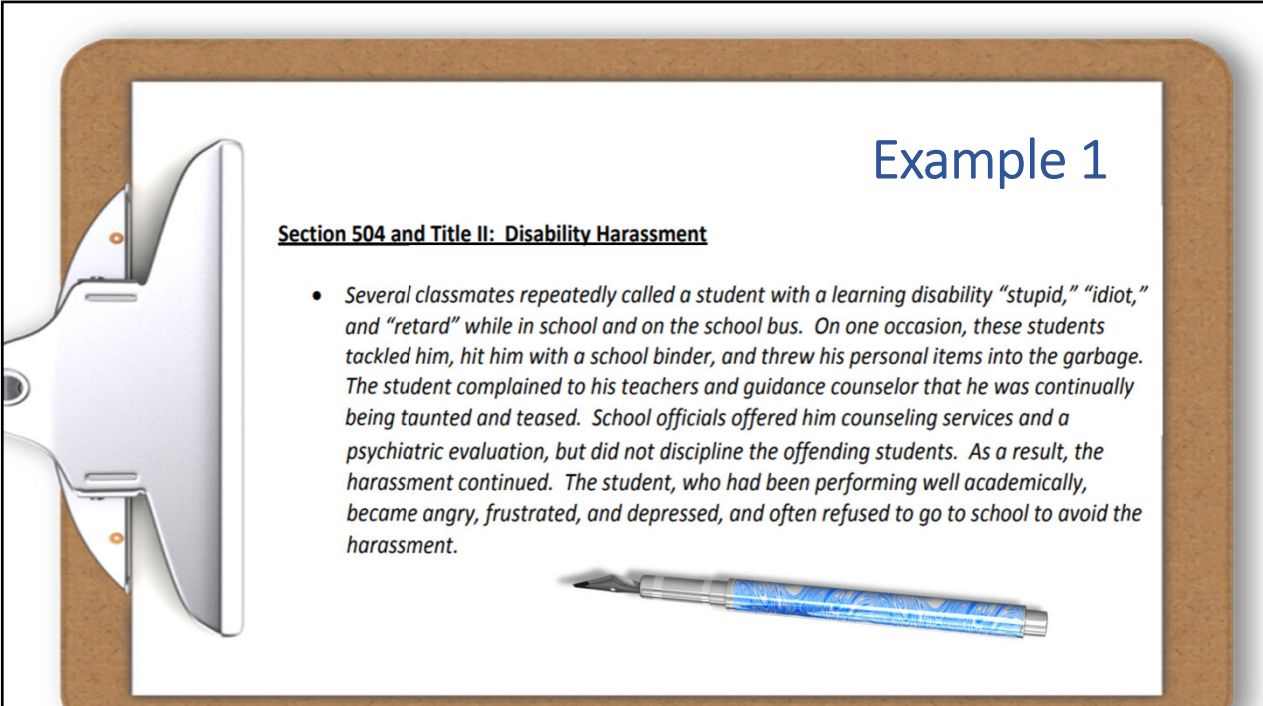
Harassment Prevention

The following measures are ways to both prevent and eliminate harassment:

- Creating a campus environment that is aware of disability concerns and sensitive to disability harassment; weaving these issues into the curriculum or programs outside the classroom.
- Encouraging parents, students, employees, and community members to discuss disability harassment and to report it when they become aware of it.
- Widely publicizing anti-harassment statements and procedures for handling discrimination complaints, because this information makes students and employees aware of what constitutes harassment, that such conduct is prohibited, that the institution will not tolerate such behavior, and that effective action, including disciplinary action, where appropriate, will be taken.

When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

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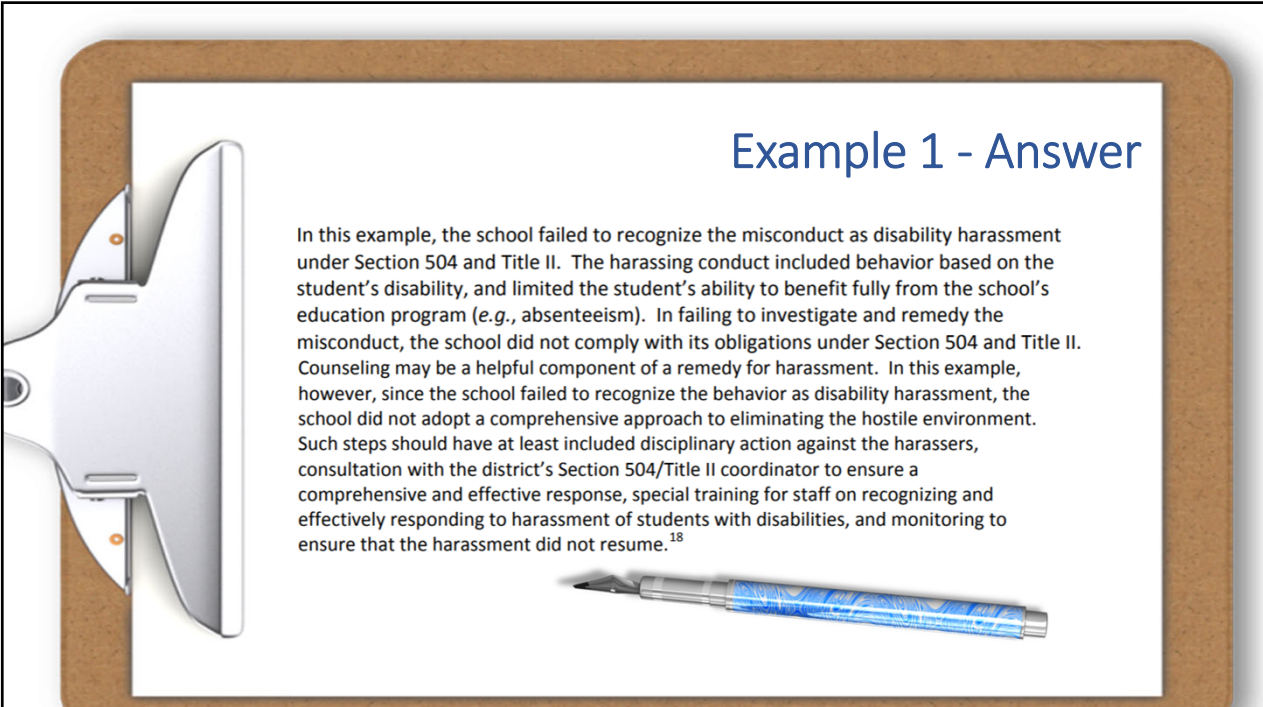


Example 1

Section 504 and Title II: Disability Harassment

- *Several classmates repeatedly called a student with a learning disability “stupid,” “idiot,” and “retard” while in school and on the school bus. On one occasion, these students tackled him, hit him with a school binder, and threw his personal items into the garbage. The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a psychiatric evaluation, but did not discipline the offending students. As a result, the harassment continued. The student, who had been performing well academically, became angry, frustrated, and depressed, and often refused to go to school to avoid the harassment.*

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Example 1 - Answer

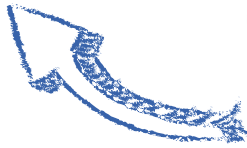
In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student’s disability, and limited the student’s ability to benefit fully from the school’s education program (e.g., absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II. Counseling may be a helpful component of a remedy for harassment. In this example, however, since the school failed to recognize the behavior as disability harassment, the school did not adopt a comprehensive approach to eliminating the hostile environment. Such steps should have at least included disciplinary action against the harassers, consultation with the district’s Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume.¹⁸

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OCR Reading Room x Google x +

← → ↻ <https://www2.ed.gov/about/offices/list/ocr/publications.html#Section504>

Apps ★ Bookmarks G Google Imported From IE M Gmail - Inbox - holly + <https://www.paperle...> Bing Title VI



Discrimination Based On Disability
Section 504 of the Rehabilitation Act of 1973 (Section 504) and
Title II of The Americans with Disabilities Act of 1990 (Title II)

Publications - Section 504 and ADA/Title II

- **Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators** (March 2007). This document provides high school educators with answers to questions students with disabilities may have as they prepare to move to the postsecondary education environment.
- **Auxiliary Aids and Services for Postsecondary Students with Disabilities: Higher Education's Obligations Under Section 504 and Title II of the ADA**. (1998). This pamphlet reviews the obligations of higher education institutions to serve students with disabilities. This pamphlet also includes answers to questions commonly asked by students and representatives of postsecondary institutions.
- **Placement of School Children with Acquired Immune Deficiency Syndrome**. (Code No. 14) (1992). This pamphlet describes the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, with respect to elementary and secondary school policies involving the placement of children with Acquired Immune Deficiency Syndrome (AIDS).
- **Student Placement in Elementary and Secondary Schools and Section 504 and Title II of the Americans with Disabilities Act**. (Code No. 19) (Revised August 2010). This publication explains Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans With Disabilities Act and how they affect student placement in elementary and secondary schools. It also explains evaluation and placement procedures, the educational setting, reevaluations, the individualized education program, procedural safeguards, and nonacademic services and activities.
- **The Americans with Disabilities Act**. (1991). This pamphlet, published by the Department of Justice (DOJ), contains a brief overview of the Americans with Disabilities Act and lists contact information.
- **The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973**. (Code No. 22) (1995). This pamphlet answers questions about the civil rights of students with hidden disabilities and the responsibilities of ED recipients.
- **Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973**. (Rev. September 2007). This pamphlet answers the following questions about FAPE: Who is entitled to a free appropriate public education? How is an appropriate education defined? How is a free education defined?
- **Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities** This pamphlet contains information for high school students with disabilities who plan to continue their education in postsecondary schools. A Spanish version also is available (see next entry).
- **Estudiantes con discapacidades preparandose para la educación postsecundaria: Conozca sus derechos y responsabilidades**. Este panfleto contiene información para estudiantes con discapacidades que planean continuar con estudios superiores. (Spanish version of "Students with Disabilities Preparing for Postsecondary Education")

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Dear Colleague Letters

-  11/12/14 FAQ – Effective communication for students with hearing, vision, or speech disabilities in elementary and secondary schools
-  10/21/14 – Bully of students with disabilities
-  1/25/13 – Access to extracurricular athletics
-  1/9/12 – FAQ – Changes from the ADAAA
-  10/26/10 – Student-to-student harassment
-  10/17/08 – Report cards and transcripts

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Other ADA Issues



Accessibility to facilities



Accessibility to websites



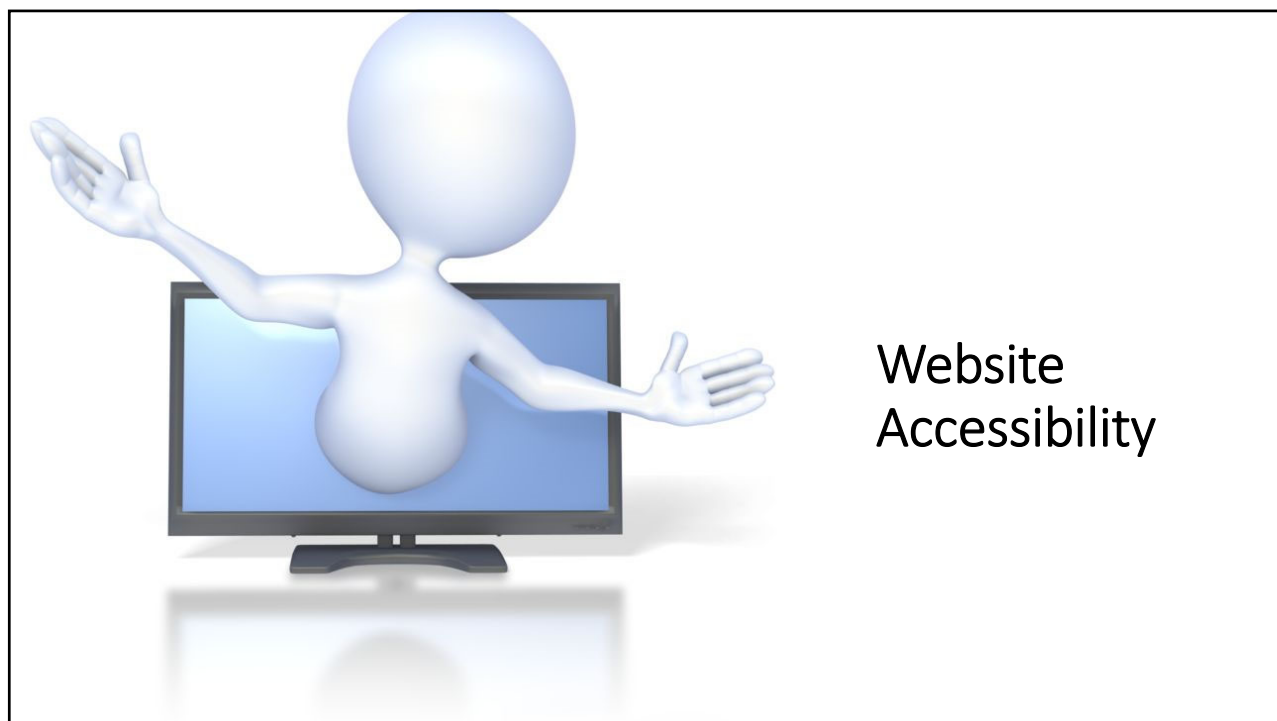
Service Animals

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FACILITIES ACCESSIBILITY



22



Website Accessibility

23



Service Animals

Change: Title II of ADA specifically includes services animals, so school districts are required to abide by the rules and establish regulations.

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Service Animals

No specific level of training required

District not responsible for the care of supervision of a service animal

Cannot exclude animal from recess, lunch, field trips, or bus ride, unless fundamentally alters program

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Service Animals

Animal v. Other Kid's Allergy (have to accommodate both)

No size/weight/breed limitations

Determinations made on case-by-case basis

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EQUAL EDUCATIONAL OPPORTUNITY SERVICE ANIMALS		FBA (LEGAL)
SERVICE ANIMAL SERVICE DOGS	<p>"Service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.</p> <p>The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.</p> <p>The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.</p> <p>28 CFR 35.104</p>	
POLICIES, PRACTICES, OR PROCEDURES	<p>A district shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability, unless the district can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 CFR 35.130(b)(7), .136(e) [See FB(LEGAL)]</p>	
ACCESS	<p>Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a district's facilities where</p>	

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More Information

If you would like more information about Section 504, Title II, or the other Federal civil rights laws enforced by OCR or would like to request technical assistance, please contact the enforcement office that serves your State or jurisdiction.

Contact information for these offices is available at
wdcrobcolp01.ed.gov/cfapps/OCR/contactus.cfm.

Information about discrimination based on disability is on OCR's website at
www.ed.gov/policy/rights/guid/ocr/disability.html.

Or, for further information, please contact OCR's Customer Service Team toll-free at
 1-800-421-3481; TDD: 877-521-2172.

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