

2009 VCASE SPECIAL EDUCATION LAW UPDATE

Kathleen S. Mehfoud

Jason H. Ballum

Stacy L. Haney

Patrick T. Andriano

Reed Smith LLP

Riverfront Plaza, West Tower

901 East Byrd Street, Suite 1700

Richmond, VA 23219

I. SUPREME COURT UPDATE

Forest Grove Sch. Dist. v. T.A., 523 F.3d 1078 (9th Cir. 2008).

The Supreme Court of the United States issued a ruling in this case on June 22, 2009. The case addressed the parents' request for tuition reimbursement for a student who had never been found eligible as a special education student. The student, T.A., had been educated in the same school district from kindergarten through the winter of his junior year of high school. The teachers had complained about the trouble he had paying attention and completing assignments. These troubles increased when he entered high school and the parents supplied substantial support for his studies outside of school. During the freshman year of high school, a psychological evaluation was conducted by the school district, but no other evaluations were done. The staff reviewed the results and said that the student was not disabled. The parents ultimately obtained a private evaluation in the second half of the junior year of school. That evaluator identified ADHD and difficulties with memory and learning and made a recommendation for a private residential academy that focused on educating children with special needs. The parents placed the student in the private residential school and hired a lawyer who initiated a due process hearing. The school district then hired a psychologist to conduct an evaluation and the parents cooperated with the evaluation but the team ultimately determined that the student did not have a disability and did not develop an IEP. The due process hearing continued and the hearing officer found that the student did have a disability as a result of the ADHD and that the school district should have identified him as disabled and offered T.A. an IEP. The hearing officer further ordered tuition reimbursement for the private school. The district court reversed the decision on appeal because the student had not first tried a special education program in the public schools in violation of 20 U.S.C. Section 1412(a)(10)(C)(ii). The court further held that equitable relief in the form of reimbursement should also be denied under the facts of the case. The U.S. Court of Appeals for the Ninth Circuit reversed and found for T.A. and his parents. The U.S. Supreme Court agreed to hear the case.

The Supreme Court decided that the referenced section of the IDEA did not require that parents try a special education program before they could obtain reimbursement. The principles established in earlier cases still applied in that parents could obtain reimbursement by showing that the student had been denied FAPE and that they had provided an appropriate program at their own expense. In this case, the school district could not establish that FAPE had been provided because no special education services at all were offered. The Court held further that Section 1412(a)(10)(C) did not limit reimbursement solely to cases where there had been an effort to try the placement in the public school and that the contents of this section were "elucidative rather than exhaustive." It was also noted that it would be a strange result if under the IDEA a parent could obtain reimbursement when inadequate services were offered, as present law permits, but could obtain no reimbursement in the situation where no services at all were offered. The Spending Clause argument that reimbursement was not clearly expressed in the IDEA in these circumstances was rejected. The Court further rejected the concern of the school district that this holding would result in a substantial financial burden on school districts because parents would try to place their children in private schools and seek reimbursement without first cooperating with the school district. The Court held that this would only be the result in those situations where the school district had failed in its duty to offer FAPE.

The implications for school districts are great. Schools should be very aggressive in their child find responsibilities and make certain to identify where appropriate. When parents give notice of removal of a general education student to a private school and of a possible claim for reimbursement as a previously undiagnosed special education student, an immediate and comprehensive evaluation should be conducted and an IEP developed if the student is found eligible. If a finding by the school district that the student is ineligible is later determined to be in error, the school district will likely be found responsible for the costs of the private placement made by the parents. The only defense in that situation will be to make equitable arguments such as that the parents did not give adequate notice of the removal to a private placement or that the private school services were excessive and overly costly in relation to what was required to meet the student's needs.

II. AUTISM AND PRIVATE PLACEMENT

J.P. et al. v. County Sch. Bd. of Hanover County, CA No. 3:06cv28 (E.D. Va. Dec. 16, 2008).

A due process hearing was initiated on behalf of a twelve year old student with autism. The student had attended public school in Hanover from January 2001 until May 2003 at which time his parents placed him in a private school, Spiritos School, so that he could receive services using applied behavioral analysis ("ABA"). The student attended Spiritos during the 2003-04 school year. The parents were seeking reentry to the public

schools for the 2004-05 school year. Hanover developed an IEP which called for a public school placement, and, by agreement to resolve a due process hearing, agreed to provide some ABA services. Other supports provided by Hanover included a one-to-one aide, a self-contained placement and the use of some discrete trials when determined appropriate by the staff. Although the parents agreed to the IEP, they quickly became concerned about JP's progress. By the end of the school year, the parents had concluded that JP made no progress in the public school program and believed that he needed intensive ABA services in a private program. The school division believed that the student had made adequate progress, did not require ABA services, and should remain in the public schools. Hanover developed and proposed for the 2005-06 school year an IEP that was essentially the same as the 2004-05 IEP. The parents rejected the proposed IEP and requested a private placement at public expense. Hanover denied that request.

In the fall of 2005 the parents enrolled the student in the Dominion School, a private school using the ABA approach and focusing on the education of students with autism. The school had just opened that year and only had three students, including JP. The parents initiated a due process hearing seeking reimbursement and the hearing was held after the student had been in the program for two weeks. The hearing officer found in favor of the school division, upholding the appropriateness of both the 2004-05 IEP and the proposed 2005-06 IEP.

The parents appealed to federal district court. The district court reversed the hearing officer's decision and found in favor of the parents. The district court ordered Hanover to reimburse the parents for the Dominion School. In a separate opinion, the court ordered the school division to pay attorney's fees and costs of \$182,971.57 and reimbursement for the Dominion School in the amount of \$33,187.90. Hanover appealed the decision to the U.S. Court of Appeals for the Fourth Circuit.

The Fourth Circuit determined that the district court failed to give the required deference to the hearing officer's decision. Thus, the Fourth Circuit vacated the district court's judgment and remanded the case with instructions that the district court reconsider the question of the appropriateness of Hanover's proposed IEP. The court also vacated the district court's order awarding attorney's fees and costs.

On remand, the district court once again determined that the hearing officer's decision was not entitled to any deference because it was not consistent with the record, taken as a whole. The district court again concluded that Hanover's IEPs were not appropriate, that the Dominion School was an appropriate placement for the student, and that JP's parents were entitled to reimbursement for the cost of educating the student at the Dominion School for the 2005-06 school year.

The district court analyzed whether JP had made progress while in the Hanover program and determined that any progress made was minimal at best. According to the district

court, the record actually showed that the student regressed in some significant areas and that his progress was stagnant in other areas.

The district court took issue with Hanover's data collection and progress reports.

[T]he three main sources of documentation of progress offered by HCPS—the IEP benchmark scores, the discrete trial records, and the speech therapy log—were irregularly kept and are missing critical data. Further, there is evidence that many of the activities which were used to generate the data that fills these forms were improperly administered, particularly in the case of the discrete trial data. The record establishes, rather clearly, that the documentary evidence on which HCPS bases its position is simply not reliable support for the conclusions urged by HCPS.

According to the district court, the progress logs skipped many days of therapy, contained no explanation for the gaps in recording, contained no standardized, test-based measures of JP's progress, and the progress reports themselves contained only conclusory benchmark scores.

The district court held that the lack of discrete trial data inhibited the student's progress. "The only graphing done regarding the HCPS discrete trial method data was performed by JP's father [Moreover,] the data sheets reflect, and [the father's] analysis of them confirmed that the data was collected irregularly." The data was collected in a sporadic fashion, and the data sheets failed to indicate the specific details of tasks given to JP. The district court also noted that JP's aide was under-trained: "She received only six days of training, which the testimony of knowledgeable experts indicates, without refutation, was insufficient." As a result of these problems, the district court determined that Hanover failed to correctly implement the discrete trial method, which was a material portion of the student's IEP.

The district court also determined that the testimony offered by the parents' experts was more credible, and, thus, more persuasive than that of Hanover's expert witnesses. The record, taken as a whole, clearly refutes the testimony given by Hanover's witnesses. The parents' experts, however, "formed their opinions based on properly conducted, recorded, and analyzed testing data."

Finally, the district court determined that the parents' placement at the Dominion School was appropriate and, as a result, awarded the parents tuition reimbursement for the 2005-06 school year. The court noted that while under Dominion's tutelage, JP acquired the ability to do seventy-three discrete trials, and subsequent testing showed that JP had retained all seventy-three skills. Moreover, JP advanced from a pre-first grade reading level to a fourth grade reading level.

This case is currently on appeal to the U.S. Court of Appeals for the Fourth Circuit.

III. TRANSPORTATION

ATTORNEY GENERAL'S OPINION TO THE HONORABLE JILL H. VOGEL (March 18, 2009), Op. Att'y Gen. to Senator Vogel, 3/18/09.

Frederick County Public Schools (FCPS) was confronted with a transportation issue regarding two students with disabilities. Student A is diagnosed with Asperger's Syndrome and uses a service dog while at school. FCPS permitted the service dog to accompany Student A on the special education school bus. Student A's parents, however, wanted the student to ride the regular education bus with his service dog. Student B, who rides the regular education school bus, has a severe allergy to dogs. Student B's parents requested that the service dog not be permitted on the regular school bus because the exposure to the animal dander would negatively impact Student B's health.

FCPS considered all feasible options, such as modifying bus routes and reimbursing the parents for providing transportation, but, ultimately, it was determined that there was no cost effective alternative to permit both students to ride separate regular education school buses. Thus, FCPS continued to make the special education bus available to transport Student A and his service dog. Student A's parents, however, continued to object. So, FCPS sought an opinion from the Attorney General of Virginia (AG), asking which of two students has a superior right to ride the regular education school bus when one student has a service dog and the other is allergic to dogs.

The AG opined that the school board is the appropriate arbiter to resolve the dispute: "it is my opinion that a school board, charged with the responsibility to operate and supervise the public schools, is the appropriate arbiter to resolve a dispute over transportation of pupils. It is further my opinion, that based on the facts you present, the decision to permit the two students to ride separate buses is not unreasonable or unlawful."

IV. PROCEDURAL AND REGULATORY ISSUES

Schaffer ex rel. Schaffer v. Weast, 554 F.3d 470 (4th Cir. 2009).

The U.S. Court of Appeals for the Fourth Circuit issued an opinion which clarifies how IEPs are viewed by the courts and how IEPs will be judged. An earlier ruling in this case was notable because it provided the basis for the Supreme Court of the United States to rule that the burden of proof in due process hearings rests with the party who initiated the hearing. This more recent opinion makes a ruling on the merits of the case after assigning the burden of proof to the parents who initiated the hearing. The parents

claimed that the IEPs developed for their child in subsequent years were inappropriate because the school district changed its services from an inclusion model to more intensive services. The parents had advocated for more intensive services from the beginning. The Fourth Circuit considered whether IEPs should be evaluated based on their appropriateness at the time of development or judged retroactively based on the amount of benefit that they afford. The Court also considered whether the school district should be faulted for later changing IEP services to more intensive ones and whether this change in the restrictiveness of services was an acknowledgment of the inappropriateness of the earlier IEPs and services.

The Fourth Circuit found that the IDEA recognizes that “children change over time” and that IEPs are typically judged prospectively rather than retroactively. Thus, courts will mostly determine the appropriateness of the IEP based on “whether, at the time an IEP was created, it was ‘reasonably calculated to enable the child to receive educational benefits.’” As the Court noted, “if services added to a later IEP were always used to cast doubt on an earlier one, school districts would develop a strong disincentive against updating their IEPs based on new information.” The district court admitted additional evidence from the parents’ experts which judged the earlier IEPs after the fact based on new information. The Fourth Circuit held that evidence which was not available at the time of the administrative proceedings should not be used to overturn earlier IEPs. “Assigning dispositive weight to evidence that arises only after the administrative hearing presents one additional and important danger: turning district court review of IEPs into a second-guessing game that will only harm the interests of the disabled children the statute was intended to serve.” Thus, a review of IEPs is to be based primarily on the information available to the school division at the time of the IEP development and not based on changes in the student’s educational functioning and other changing educational needs. Services should be offered based on a careful assessment of the student’s needs at the time of the IEP development.

M.S. v. Fairfax County Sch. Bd. et al., 553 F.3d 315 (4th Cir. 2009).

MS is a student with cognitive and communication impairments including mental retardation, oral motor apraxia, and mild to moderate autism. After Fairfax County Public Schools (FCPS) proposed an IEP for the 2002-03 school year, the parents rejected the IEP, unilaterally enrolled MS in a private program, and requested reimbursement from FCPS. FCPS denied this request and took the position that the private program was not appropriate. On June 1, 2004, the parents requested a due process hearing and sought reimbursement for their unilateral placement of MS in the private program and to have MS’s future educational placement determined.

In January of 2005, a hearing officer found that the school system’s IEP did not provide sufficient one-on-one instruction to MS. However, the hearing officer denied the parents’ claim for reimbursement for the private program, finding that the private program was

not reasonably calculated to give MS educational benefits. The hearing officer ordered FCPS to provide MS with a program that included private sign-language instruction, private speech and language instruction, and compensatory education.

This case concerns the issue of the mentally retarded student's placement in Lindamood-Bell program by his parents for almost four years and tuition reimbursement sought for the program. The district court found that the Fairfax IEPs were inappropriate because the student had made little progress and that, although it was acknowledged that the student required one-to-one services in order to learn, the IEP left the decision up to school staff whether to provide one-to-one services. The court denied reimbursement for the Lindamood-Bell program because the student also had not made progress in that program and the student required some group instruction which was not available in the private program. The Lindamood-Bell program also did not provide a full program of studies and only addressed limited needs of the student.

The parents appealed to the U.S. Court of Appeals for the Fourth Circuit contending: (1) the district court erred by not awarding any reimbursement for Lindamood-Bell; and (2) the district court erred by concluding that the 2005-06 IEP was valid. The Fourth Circuit reversed in part and affirmed in part. First, the Fourth Circuit determined that the district court erred by not conducting a year-by-year analysis of whether the private placement was an appropriate placement. "Evaluating both IEPs and parental placements on a yearly basis simply acknowledges that what is 'reasonably calculated' to confer some educational benefit on the child may change over time."

Further, the Fourth Circuit noted that in addition to conducting a year-to-year analysis of a private placement, a court must also consider, given the equitable nature of the IDEA, whether partial reimbursement is appropriate for a given year.

The court disagreed with the parents' contention that the district court was in error when it considered the student's actual progress in the private school program and the restrictive nature of the private school program. The court noted that while actual progress and the restrictive nature of a private school program are important factors to be considered in determining the appropriateness of a placement, these factors alone are not dispositive. Finally, the Fourth Circuit found no error with the district court's finding that the 2005-06 IEP was adequate.

This case has been remanded back to the U.S. District Court for consideration of the appropriateness of the Lindamood-Bell placement on a year-to-year basis and to determine whether any partial reimbursement should be awarded to the parents. Hogan v. Fairfax County Sch. Bd., 2008 WL 4924692 (E.D. Va. Nov. 13, 2008). A due process hearing officer found that the school division failed to provide the student with a free appropriate public education during the 2005-06 school year and that the parents had incurred \$28,079.52 in expenses. Because the hearing officer determined

that the father had acted unreasonably, however, the hearing officer reduced reimbursement by one-third and only awarded the parents \$18,719.68. The hearing officer also determined that no compensatory services were warranted. The parents appealed the hearing officer's decision to U.S. District Court. This decision only addresses the parents' Motion to Bifurcate.

The parents sought to bifurcate their claim for attorneys' fees and costs from their claims for review of the hearing officer's decision on reimbursement of education expenses and review of the hearing officer's decisions on compensatory education. Federal Rule of Civil Procedure (FRCP) 42(b) provides that "for convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims or third party claims." Bifurcation under FRCP 42(b) is within the sound discretion of the trial court. Bowie v. Sorrell, 209 F.2d 49, 51 (4th Cir. 1953).

Finding against the parents, the Court determined that they were not entitled to bifurcation of their attorneys' fees claim. The Court reasoned that the potential savings of judicial resources gained by bifurcating would be small and possibly negative. Further, the Court determined that it could simultaneously decide the merits of the case and perform a mathematical calculation of attorneys' fees. In addition, because there will likely be some overlap of evidence in presenting and defending the claims, bifurcating would likely lead to duplicative proceedings, thus, undercutting the interests of judicial economy.

V. DISCIPLINE

Fitzgerald v. Fairfax County Sch. Bd., 556 F. Supp. 2d 543 (E.D. Va. 2008).

This case was brought by the parents of Kevin to challenge a manifestation determination review (MDR) decision that there was no connection between a paintball shooting incident and his emotional disturbance. Kevin's IEP for tenth grade noted that he had "inappropriate behaviors" in some classes and was "negative and sarcastic toward teachers" and a similar provision was placed in the eleventh grade IEP. Kevin was recommended for discipline because he offered to drive four boys by his high school and shoot at the building with the paint gun that Kevin provided. The gun malfunctioned and Kevin drove the group to get more supplies. They then returned to the school and Kevin, the driver, had one of the other students hold the wheel while he shot at the school. A couple of the boys then asked Kevin to take them to another location, and Kevin subsequently returned to the school for a third paint ball shooting incident. Ultimately there were thirty windows, two buses and one delivery truck hit in the attacks. Because Kevin ignored a stop sign, he was stopped by the police and the paintball gun was noticed. Kevin admitted his involvement in exchange for a promise of no criminal

charges. He was recommended for expulsion for possession of a pneumatic gun. He was ultimately suspended for the rest of the school year.

The MDR was held on January 5, 2007 and lasted as short as 10 minutes and as long as 45 minutes depending on whose version is believed. On July 25, 2008, the parents initiated a due process hearing. The hearing officer found for the school division and the parent appealed.

The federal district court acknowledged that there was a difference between parental involvement and parental consent or parental veto. The later were not required. Parents have no right to determine the school division's members of the IEP team or MDR team.

If the relevant and required members of the IEP team are present, there is no obligation to insure that all members of the IEP team know the student personally. There is also no requirement that the members of the MDR team have served on a prior IEP team meeting. IEP team membership is not static.

Parental involvement in an MDR or IEP meeting does not require a vote or a unanimous determination. Otherwise, parents could "stack the deck" by inviting many individuals to attend and to side with them.

There is no requirement that every member of the MDR team review every document in the student's file. The only requirement is that pertinent information from the file be reviewed and information considered by the parents be considered. The MDR team properly considered and discussed some information from the file, even though some of the members of the team had not reviewed any documents prior to the meeting.

The MDR team also acted legally when it met prior to the meeting without the parents and reviewed the case. As long as the team came to the meeting with open minds, they conducted no illegal meeting in the earlier gathering.

Although there was some evidence that Kevin could be drawn into misconduct with his friends, the evidence in the case showed that he was clearly a ringleader in this situation. "Kevin simply made a bad decision; he must now live with the consequences."

Finally, testimony submitted in written reports without the opportunity for cross-examination is not as credible as live testimony. Reports based on the parents' version of the facts are less likely to be objective. The determination of no manifestation was upheld.

VI. PRIOR WRITTEN NOTICE

J.G. v. Douglas County Sch. Dist., 552 F.3d 786 (9th Cir. 2008).

The parents requested initial evaluations of twin boys on May 5, 2003, and the request was received by the Nevada school district on May 7, 2003. The district did not immediately provide notice of whether it would evaluate the children, but instead referred the twins to the district's "child find day" on June 20, 2003. Because the parents were not provided notice of whether or not the division would evaluate, the parents had the children privately evaluated, and the private assessments commenced in the middle of May.

Based on the screening done on "child find day," the district scheduled an "assessment meeting" on August 15, 2003. The district had no reason to suspect that the twins had autism until July 28, 2003, when it was contacted by the twins' private service provider. The district waited until August 15, 2003 and then provided notice that it would evaluate, gained consent to evaluate, conducted preliminary assessments, although none for autism, and proposed IEPs. On August 25, 2003, IEPs were proposed for the twins based on identifications of developmental delays and speech language impairments. After additional assessments, new IEPs for the twins were proposed in October and November which addressed the student's autism characteristics. The parents sued alleging delays in the evaluations, delays in the proposed IEPs, and a failure to offer adequate IEPs. The hearing officer and the courts upheld the IEPs and did not find against the school division for delaying in conducting the evaluations or developing IEP. However, the 9th Circuit ruled that the district's failure to provide timely notice of its intent to evaluate the twins entitled the parents to recover the \$1,670 they spent on private evaluations.

VII. STUDENT RECORDS AND FERPA

A. Changes have been made to keel FERPA compatible with new technology:

The definition of the term "student" has been expanded to include those students in "attendance in person or by paper correspondence, videoconference, satellite, Internet, or electronic information and telecommunications technologies for students who are not physically present in the classroom."

The definition of "personally identifiable information" has been expanded to include a student's "biometric record." The term "biometric record" is further defined as "a record of one or more measureable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting."

FERPA allows schools to disclose “directory information” without parental consent. The statutory and regulatory lists of what directory information includes remains the same, but the new regulation goes further to describe what cannot be included in directory information. Directory information cannot contain a student’s social security number, and may not contain a student’s identification number if someone else can electronically access the student’s records with the identification number alone.

B. FERPA now requires school divisions to make greater efforts to control internal access to student records:

Additional restrictions on the disclosure of directory information have been added. The old regulations required that prior to the disclosure of directory information, the school had to provide notice to the parents of the information that would be disclosed and allow the parents to opt out of the release of directory information. These two requirements remain, but the new regulations also provide three more conditions regarding directory information. First, if a parent opts out of the disclosure of directory information, then the opt-out remains effective until or unless the student rescinds the opt-out request. Second, an opt-out may not prevent a school from disclosing or requiring a student to release the student’s name or identifier or institutional e-mail address in a class in which the student is enrolled. (FERPA does not give a student the right to anonymity in class.) Third, the school may not disclose or confirm directory information “if a student’s social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student’s records.”

A school division may still make a student’s records accessible to “school officials with a legitimate educational interest” without parental consent, but now the school must use reasonable methods to ensure that the school officials only have access to those education records in which they have legitimate educational interests. If the school does not use physical or technological access controls, then the school must ensure that its administrative policy for controlling access to education records is effective.

Schools must use “reasonable methods” to identify and authenticate the identity of parents, student, school officials, and any other parties to whom the school discloses education records.

C. The new regulations significantly expanded the exception for health and safety emergencies:

The new regulations state that a school may disclose information to “any person whose knowledge of the information is necessary to protect the health and safety of the student or other individuals,” when there is “an articulable and significant threat to the health or safety of the student or other individuals.” The school must have a rational basis for

making the disclosure, and it must document the threat and the parties to whom information was disclosed.

D. The on-going issues of excessive e-mail use.

VIII. THE AMERICANS WITH DISABILITIES ACT OF 2008

The Americans with Disabilities Amendments Act of 2008 (the “Amendments Act”), which became effective January 1, 2009, amends the ADA and the Rehabilitation Act of 1973. The Amendments Act greatly expands the meaning of the term “disability.” The result of this expansion is that many more students will now fall within the meaning of the term “disabled” under Section 504.

The Amendments Act does not change the basic definition of disability which is:

- (1) a mental or physical impairment that substantially limits one or more major life activities;
- (2) a record of such an impairment; or
- (3) being regarded as having such an impairment.

Although the basic definition of “disability” is unchanged, the Amendments Act broadens the scope of “disability by changing the meaning of the terms “major life activity” and “substantially limited.”

The Amendments Act contains a non-exhaustive definition of “major life activity” that is much broader than the definition previously contained in the Section 504 regulations. The Amendments Act defined major life activity to include the following:

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working

The Amendments Act also provides that major life activities include the operation of a “major bodily function” including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The Amendments Act also made several changes to the way the “substantially limits” prong of the definition of disability is applied. Specifically and most significantly, the Amendments Act directs that the “determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.” Mitigating measures include:

- Medication
- Medical supplies, equipment, or appliances
- Low-vision devices (not including ordinary glasses and contact lenses)
- Prosthetics
- Hearing aides, implants, and devices
- Mobility devices
- Oxygen therapy equipment and supplied
- Assistive technology
- Reasonable accommodations
- Auxiliary aides or services, including interpreters for the hearing impaired and readers for the visually impaired
- Learned behavioral or adaptive neurological modifications

The Amendments Act also provides that an impairment that substantially limits only one major life activity need not limit other major life activities to be considered a disability and directs that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

These changes to the meaning of disability will mean that more students will now be considered disabled and will be eligible under Section 504. When making eligibility determinations, it is important to keep these changes in mind. It is also important, however, to remember that while the number of eligible students will likely increase, the school divisions' obligations to each eligible student remain unchanged.