

Accessible Law

Edition I: Americans with Disabilities Act

ACCESSIBLE LAW

EDITOR-IN-CHIEF

Alysia Castillo

CHIEF REPORTER

Fabiola Segovia

DIRECTOR OF TECHNOLOGY

Tiffany Jones

ACQUISITIONS

Charles Gurley

JUNIOR REPORTERS

Arnesia Davis

Mary Heliane Fabian

Elizabeth Kirby

Karri Bertrand Bolton

Miguel Garcia

Jennifer Lurette

Nekia Bryant

Jenifer Hancock

Ashley Jones Wright

CHIEF EXECUTIVE OFFICER

Michael Graves

TABLE OF CONTENTS

3 SERVICE PETS AND THE ADA: FAQ

An interview with Alysia Castillo, Editor-in-Chief of Accessible Law, discussing some of the most common questions regarding protections provided to service pets under the Americans with Disabilities Act (ADA).

6 STUDENT ACCOMODATIONS IN THE CLASSROOM

An interview with Mackenzie Casall, Director of Special Education at Duncanville ISD, discussing some of the most common questions regarding student accomodations in the classroom.

10 ENTIENDO ACOMODACIONES PARA ESTUDIANTES

Una entrevista en Español con Eduardo Hernandez, Director de Escuelas, del distrito escolar de Duncanville discutiendo unas de las preguntas mas comunes acerca de las acomodaciones en el salón de clase.

13 FACULTY SPOTLIGHT: ASSOCIATIONAL DISABILITY

An interview with Professor Michael Maslanka, Assistant Professor of Law at UNT Dallas College of Law, regarding illegal discrimination against an employee associated with a person protected under the American with Disabilities Act (ADA).

17 SOURCES

Providing more information and resources for the topics discussed in this edition.

SERVICE PETS AND THE ADA: FAQ

INTERVIEW WITH ALYSIA CASTILLO

In 1990, President George H.W. Bush signed the Americans with Disabilities Act (ADA) into law. This civil rights legislation makes discrimination against individuals with disabilities illegal. Under the ADA, individuals with disabilities are protected in all areas and situations open to the public. This protection extends to individuals who utilize service animals. The following are frequently asked questions regarding the use of service animals and can be found on the ADA website.



“ NO SERVICE ANIMAL CAN BE EXCLUDED BASED ON STEREOTYPES ABOUT THE ANIMAL'S BREED. ”

What is a service animal?

Under the ADA, a service animal is defined as a dog that has been trained to do work or perform tasks for an individual with a disability. The dog must be trained to take a specific action to assist the person with a disability. For example, a dog that alerts a person with diabetes when his or her blood sugar is low, or a dog who can detect the onset of a seizure.

Are emotional support, therapy, comfort, or companion animals considered service animals under the ADA?

No. These animals provide comfort just by being with a person. Since they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA.

If someone's dog calms them when having an anxiety attack, does it qualify as a service animal?

It depends. The ADA makes a

distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and the dog takes a specific action to help avoid the attack or lessen its impact, then it would qualify as a service animal. But, if it's just the dog's presence that provides comfort, then it is not considered a service animal under the ADA.

Does the ADA require service animals to be professionally trained?

No. People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.

What questions can a covered entity's employees ask to determine if a dog is a service animal?

A: In situations where it is not obvious that the dog is a service animal, staff may ask only two specific questions: (1) is the dog a service animal required because of a disability? and, (2) what work or

task has the dog been trained to perform? Staff are not allowed to request any documentation for the dog, ask that the dog demonstrate its task, or ask about the person what type of disability they have.

Must service animals wear a vest, patch or special harness identifying them as service animals?

No. The ADA does not require service animals to wear anything that says they are service animals.

Can a person bring a service animal with them as they go through a salad bar or other self-service food lines?

Yes. Service animals must be allowed to accompany their handlers at self-service food lines. Additionally, service animals may not be prohibited from community food prep areas found in shelters or dorms.

Can hotels assign designated rooms for guests with service animals, out of consideration for other guests?

No. A guest with a disability who uses a service animal cannot be restricted to “pet-friendly” rooms. In fact, the guest must be provided the same opportunity to reserve any available room at the hotel, just like guests without disabilities.

Can hotels charge a cleaning fee for guests who have service animals?

No. Hotels cannot charge guests for cleaning the hair or dander shed by a service animal. But, if the service animal causes damages to the room, the hotel is permitted to charge the same fee for damages as charged to other guests.

Can people bring more than one service animal into a public place?

Generally, yes. Some people with disabilities may use more than one service animal to perform different tasks. For example, a person may need two service animals for support and stability while he or she walks. If both dogs can be accommodated in the public place, then both should be allowed. However, if it is not possible to accommodate more than one service animal, staff may request that one of the dogs be left outside.

My city requires all dogs to be vaccinated. Does this apply to my service animal?

Yes. Service animals are not exempt from local animal control or public health requirements.

My city requires all dogs be registered and licensed. Does this apply to my service animal?

Yes. Service animals are also subject to local dog

licensing and registration requirements.

My city requires me to register my dog as a service animal. Is this legal under the ADA?

No. Mandatory registration of service animals is not permissible under the ADA. However, it’s important to remember that service animals are subject to the same licensing and vaccination rules that are applied to all dogs.

Can service animals be any breed of dog?

Yes. There are 3 key items to this answer: The ADA does not restrict the type of dog breeds; no service animal can be excluded based on stereotypes about the animal’s breed; and even municipality prohibitions must make an exception for service animals of a prohibited breed. Just remember, a service animal can be excluded if it poses a direct threat to the health or safety of others or if it is not under control of the handler.

What are the laws that apply to my business?

Under the ADA, privately owned businesses that serve the public are prohibited from discriminating against individuals with disabilities. These are things like restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities. The ADA requires all of these businesses allow people with disabilities to bring their service animals in all areas customers are generally allowed. An individual with a service animal may not be segregated from other customers.

How can I tell if an animal is really a service animal and not just a pet?

Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not sure whether it is a pet or service animal, you can ask the handler two questions: (1) Is the dog a service animal required because of a disability? and, (2) what work or task has the dog been trained to perform? Keep in mind, a person going to a restaurant or theater is not usually going to carry documents about their disability. Because of that, documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. It’s also important to remember that you may not insist on proof of the animal’s certification before permitting the service animal into your business.

When can service animals be excluded?

The ADA does not require covered entities to modify

policies, practices, or procedures if it would “fundamentally alter” the nature of the goods, services, programs, or activities provided to the public. The ADA does not overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. So, if a service animal is out of control and the handler does not take effective action to control it, if it is not housebroken, or if the animal is threatening someone, the animal may be excluded.

When might a service dog’s presence fundamentally alter the nature of a service or program provided to the public?

In most settings, the presence of a service animal will not result in a fundamental alteration. But there are some exceptions. For example, at a boarding school, service animals could be restricted from a specific area of a dormitory reserved specifically for students with allergies to dog dander or at a movie theater, when the dog barks continuously.

Do service animals have to be on a leash? Do they have to be quiet and not bark?

The service animal must be harnessed, leashed, or tethered while in public places unless it would interfere with the service animal’s

work. If that is the case, the person must use voice, signal, or other effective means to maintain control of the animal. For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item at a distance from her. Another example is a returning veteran who has PTSD and has great difficulty entering unfamiliar spaces. The veteran may have a dog that is trained to enter the space first, check to see there are no threats, and come back to signal that the place is safe. For this kind of task, the dog must be off leash to do its job, but it could be leashed at other times. Both examples show that the person still has the service animal “under control.” Under control also means that a service animal should not be allowed to repeatedly bark in a class, theater, library, or other quiet place. Barking once or barking because it was provoked does not mean the dog is out of control.

What can my staff do when a service animal is disruptive?

If a service animal is out of control and the handler does not take effective action to control it, staff can request that the animal be removed from the premises.

Are hotel guests allowed to leave their service animals in their room when they leave the hotel?

No, the dog must be under the handler’s control at all times.

My county health department has told me that only a guide dog should be admitted. If I follow those regulations, am I violating the ADA?

A: Yes, if you follow this regulation, you are violating the ADA. The ADA takes priority over the local or state laws and regulations.

Are churches, temples, synagogues, mosques, and other places of worship required to allow individuals to bring their service animals into the facility?

No. Religious institutions and organizations are specifically exempt from the ADA. However, there may be state laws that apply to religious organizations ■

If you would like more information on Service Pets and the ADA, please visit the ADA website or the “Sources” page on our website. You may also view the end of this edition for more information.

Penalties for Violating Service Animal Laws

It is important to know that discriminating against a person who uses a service animal is punishable by a fine of no more than \$300 and 30 hours of community service.

Fraudulently claiming an untrained animal as a service animal is also punishable with a fine of no more than \$300 and 30 hours of community service.

STUDENT ACCOMMODATIONS IN THE CLASSROOM

INTERVIEW WITH MACKENZIE CASALL

The American with Disabilities Act (ADA) makes it illegal to discriminate against people with disabilities at work, in school, and in public spaces. The ADA can make it easier for parents to get help for their child. Because the ADA is very broad, it works in conjunction with Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act (IDEA). The following article is a guide for parents to learn about the different accommodations their child can receive in the classroom.



Scan the QR code to watch the video on this article.

Think Accommodations are needed? Here's the Process...

1



Talk to your child's teacher! Some accommodations can be provided without placement in special education or 504.

2



If concerned about the impact of a possible disability, contact the Response to Intervention Committee at your child's school and request a meeting.

3



Schedule dyslexia assessment or special education assessment. If a disability is already identified, an assessment may not be required.

4



School has 45 school days from parent's written consent to testing to complete evaluation of the student.

5



After initial evaluation, school has 30 calendar days to complete an ARD or 504 meeting.

6



Teacher implement the accommodations decided by the ARD or 504 Committee.

“If you feel like your student’s civil rights are being violated based on a teacher not implementing a 504 plan or appropriate accommodations, you have due process rights and can file due process.”



Mackenzie Casall
Director of Special Education,
Duncanville ISD

Can you tell us a little bit about yourself?

My name is Mackenzie Casall. I’m the Director of Special Education in Duncanville ISD. I’m in my 17th year in education. I’ve been in the classroom as a special education teacher. I’ve worked assessment as an educational diagnostician and also in the central office as a special education coordinator. I’ve been a principal for special needs students.

What is an accommodations?

An accommodation is a change or an adaptation that helps a student overcome or work around their disability. It is meant to level the playing field. It does not change what is being taught or the expectation for a student. That is a modification, which is different from an accommodation. Accommodations can adjust scheduling, setting, materials, instruction, or the student response.

Where does a parent start if their child needs accommodations?

I would recommend starting with talking to that child’s teacher. Many accommodations can be provided in schools even if the student does not have an identified disability and is not in special education or section 504 of the U.S. Rehabilitation Act. We can provide those through RTI which is Response to Intervention. If there is suspected disability, then I would be talking to that student’s teacher and maybe the counselor at that school as well to see whether or not we need to do a referral for special education or 504 identification to determine if a more detailed plan and more assistance can be provided to that student if they have a disability.

What are the most common common misconceptions about accommodations?

One of the biggest misconceptions is that people do not understand the difference between an accommodation and a modification. An accommodation levels the playing field, but the students are still being held to the same standards as all other students that do not have a disability. A modification changes that expectation for a student such as what is being taught and maybe even the rigor of the instruction for that student. Another misconception is that accommodations have to be for a specialized setting. That is not true. We provide special ed support in the general ed setting as well, and most accommodations would be for the general ed setting, not just the special education setting. And also that accommodations can be through Response to Intervention, through the RTI, and don’t have to be in a program such as special education or 504 to receive accommodations.

Do all teachers have to implement the accommodations?

Yes. If a teacher has a student that has an individualized education plan, IEP, or a 504 plan, they have to implement all of the accommodations that are in the plan. It is not optional. That is a law. They are required by law to follow those, and it has to be used routinely and effectively.

If a parent disagrees with the school’s decision, what can they do?

Well, first, I think schools work really hard to collaborate with the parents, and we are always trying to make sure we are on the same page and working on the best interest of students. However, if a plan that does not reach consensus occurs, for 504, if we have a child that’s in 504, you can file an OCR complaint. If you feel like your student’s civil rights are being violated based on a teacher not implementing a 504 plan

Accommodations

- Student learns grade level material with supplemental support
- Student expected to perform at same level as students without disabilities
- Provided in the regular classroom setting or isolated special education setting
- Does not require an official ARD or 504 meeting but having one makes it mandatory for teachers to provide accommodations



Modifications

- Changes the content by teaching at a different level than the grade level requirement
- Students have different standards of mastery than students without disabilities
- Provided in the regular classroom setting or isolated special education setting
- Requires an ARD committee meeting

or appropriate accommodations not being developed in a 504 plan for special education, you have due process rights and can file due process. We start with a mediation, and then it could possibly go to a due process hearing to settle what that student is needing and whether we are following the school's plan or looking at the parent's concerns. A parent can revoke consent from a student's special concerns in the entirety. They have a right to revoke consent at anytime, but they cannot choose a part of the plan and not parts of others. It's all or nothing in special ed. In special ed, you can choose the whole, being in special ed in its entirety, or revoking consent completely.

What body of law authorizes accommodations?

There are three laws that authorize accommodations in the schools.

There's Americans with Disabilities Act, which allows for public accommodations and provides accessibility for students in schools and in the community. There's Section 504 of the Rehabilitation Act, which authorizes necessary accommodations in schools based on the student's disability and needs, and then there's Individuals with Disabilities Education Act or IDEA, which authorizes accommodations for students that are in special education. These accommodations allow a student to have a Free and Appropriate Public Education or FAPE.

Who can get accommodations?

Any student that is in special education, which is for ages 3 through 22, under IDEA, and is in a public or charter school is eligible for accommodations, and these are determined by the

Admission, Review and Dismissal Committee (ARD) and developed Individualized Education Plan or IEP based on their present levels of academic achievement and functional performance and their disability and their needs. Also, students that are receiving services through Section 504 may also receive accommodations through their 504 plan based on their disability and their needs. And there's other students that can receive some accommodation through Response to Intervention Services that are not identified with disability and that are not in a program that is specific for students with disabilities.

Who can refer a child for an accommodation?

An ARD committee can refer an accommodation for students in special education. The ARD committee includes a parent. It also

includes a general education teacher, a special education teacher, a district representative, which is usually a campus administrator, and an assessment staff. Other appropriate parties may be at the ARD committees as well that may help to determine the accommodations for a student based on their disability and based on their need. As in 504, the 504 committee would develop the accommodations based on their needs as well.

Is nationality or immigration status a factor when a child is receiving accommodations?

No, not at all. We cannot exclude any student based on race, nationality, or immigration status. As far as immigration status, we don't even ask the immigration status when the students enroll in the schools.

Who decides whether a child is eligible for accommodations?

All students that are in special education are automatically eligible for accommodations, but they don't qualify for all accommodations. They are qualified based on what their individual student need is, based on their disability, based on their present levels of performance. Then, we determine what accommodations are needed to help level the playing field for the student. For 504, same thing that the 504 committee would help determine that.

Is parental notice or consent required?

Not specifically for accommodations. Consent is required to place a student in special education. After that, we provide notice for any ARD committee meeting to make sure that the parent is notified of

that meeting. When they come, we want to always have meaningful input from the parents, and they are part of the committee, and we should be developing accommodations collaboratively. If, for some reasons, it is determined that an accommodation is needed or not needed or there is disagreement from that parent, we cannot institute those accommodations until five days prior written notice provided to that parent. We are always trying to work collaboratively with parents and come up with a plan that is in the best interest of the students.

How does an unaccompanied minor without a parent in the country receive accommodations?

When a student is enrolling in school, there has to be a guardian that's enrolling that student that's taking responsibility for that child. That may be another family member or that may be from an advocacy center, but there's always somebody that is involved and that person would become the parent in the ARD committee.

What types of accommodations are available, and could you explain the most common ones?

Sure. There are lots of accommodations, and they are individualized for that student. They can be adjusting schedulings, setting, materials, instructions, or the student response methods. Some of the most common accommodations for students that we see may be an opportunity to respond orally for a student that has a writing disability, or extra time for assignments. It may be a copy of class notes for a student that might have a processing disability or writing disability as well. Other accommodations could be the use of visual support, preferential seating, or oral administration to assist with reading ■

Who is eligible for an accommodation?



Any student ages 3 - 22 that meets eligibility for special education services under IDEA AND is in a public or charter school

OR

Any student receiving services under Section 504 due to one or more physical or mental disabilities that substantially limit one or more major life activities, such as walking, seeing, hearing, or speaking.

ENTENDIENDO ACOMODACIONES PARA ESTUDIANTES

INTERVIEW WITH EDUARDO HERNANDEZ

La ley American with Disabilities Act (ADA) prohíbe la discriminación contra personas con discapacidades en el trabajo, en la escuela, y en espacios públicos. La ADA facilita a los padres que obtengan ayuda para su hijo. Debido a que las protecciones bajo la ADA son muy amplias, funciona junto con Section 504 of the Rehabilitation Act y con Individuals with Disabilities Education Act (IDEA). El siguiente vídeo es una guía para que los padres aprendan de las diferentes arreglos que su hijo puede recibir en el salón de clase.

¿Dr. Hernandez, nos puede decir acerca de su experiencia?

Soy Eduardo Hernandez, el director de, el supervisor de los directores en el distrito escolar de Duncanville. Estoy en el diecisiete año de mi carrera, habiendo sido director de la primaria, secundaria, y preparatoria, trabajando con maestros y directores en todas las areas de la escuela. En este año escolar, soy el supervisor de todos los directores de este distrito.

¿Que son acomodaciones?

Las acomodaciones son un cambio o una adopción que se usan como estrategia cuando los estudiantes están teniendo un problema en su aprendizaje. No cambia el nivel o la expectativa del estudiante, pero si es una manera que usamos como educadores para ayudar al estudiante a aprender y sobrellevar la desabilidad que tiene su aprendizaje.



Scan the QR code to watch the video on this article.

¿Cuales leyes autorizan las acomodaciones?

La Ley Individual with Disabilities Act (Individual with Disabilities Educational Act) autorizan las acomodaciones necesarias para cualquier estudiante que se elegible para servicios de educación especial. Incluso, también provee bajo los reglamentos de recibir una educación especial gratis que los distritos escolares.

¿Cuales leyes autorizan las acomodaciones?

La Ley Individual with Disabilities Act (Individual with Disabilities Educational Act) es la ley federal que requiere que todo distrito escolar provee las acomodaciones necesarias para cualquier estudiante que sea elegible para servicios de educación especial. Incluso, esto forma parte de proveer para cada estudiante una educación apropiada y garantizada en los distritos escolares en el estado de Tejas.

La Sección 504 que es parte de la ley Individual with Disabilities Act (Individual with Disabilities Educational Act) requiere que todo distrito escolar siga proveyendo cualquier acomodación que el estudiante necesite tomando en cuenta su discapacidad.

Otra ley que hay que tomar en cuenta es la American with Disabilities Act; que también es una ley o un mandato que requiere que todo distrito escolar provea este tipo de acomodaciones en todos sus edificios escolares.

¿Quien puede recibir acomodaciones?

Bajo la ley Individual with Disabilities Act Act (Individual with Disabilities Educational Act) o Section 504, cualquier estudiante dentro de la edad de 3 a 22 años puede recibir servicios especiales en cualquier escuela pública del estado de Texas o en cualquier escuela "charter."

¿Quien puede referir a un estudiante para recibir acomodaciones?

El comité de servicios especiales o "ARD Committee" es el comité que puede referir a cualquier estudiante para servicios especiales siempre y cuando sea elegible el estudiante. Este comité consiste del padre, a veces el estudiante, típicamente el director o el subdirector de la escuela, miembros de la facultad de servicios especiales, o también incluso asesores del departamento de servicios especiales. Ellos serían las personas indicadas que participarían en este comité.

¿La nacionalidad o estado migratorio tiene algún efecto para el estudiante?

Todo estudiante, sin excepción, tiene derecho a servicios de educación especial, siempre y cuando el comité lo decida.

¿Quien decide si un estudiante es elegible para recibir acomodaciones?

El comité de servicios especiales o el comité de Sección 504 sería el grupo indicado para decidir si un estudiante recibe o no recibe las acomodaciones necesarias siempre tomando en cuenta la discapacidad del estudiante y las necesidades que cada estudiante necesita para mejorar su aprendizaje.

¿Es necesario avisar a los padres y tener su consentimiento?

Como toda decisión, cada distrito trabaja muy duro para poder tener la aprobación de cada padre en todas nuestras decisiones. En cuanto a educación especial, tratamos de trabajar con el padre, explicar cada derecho, explicar porque estamos tomando las acciones que se recomiendan con el comité de servicios especiales. Pero la ley nos

permite, siempre y cuando le demos aviso a los padres, mínimo de cinco días, si va haber un cambio en la educación de su estudiante. Entonces, tratamos de tener una buena relación con los padres, explicando todo, pero la ley si nos apoya para cambiar el aprendizaje si es para el mejoramiento de cada estudiante individualmente.

¿Como puede recibir acomodaciones un estudiante que viene de otro país sin sus padres?

Como cualquier otro estudiante en nuestro distrito, solamente necesitamos la aprobación del guardián del estudiante y podemos empezar a tramitar al estudiante para recibir servicios especiales

¿Que tipo de acomodaciones están disponibles y cuáles son las más comunes?

Muchas de las acomodaciones que se usan podrían ser: un cambio en el orden de clases de cada estudiante, un cambio en el ambiente (ya sea clase por clase, o en el día total), cambio en materiales o el tipo de materiales que se usan con cada estudiante de parte del maestro, o también el tipo de aprendizaje que se le otorga a cada estudiante. Todo eso sería a base a la discapacidad de cada estudiante individual. Claro, algunas de las cosas que usamos comúnmente serian darles copias de las notas de la clase del maestro, darle más tiempo al estudiante para que pueda contestar las preguntas, incluso contestar las preguntas oralmente y no solamente en escrito. Y a veces algo tan fácil como sentar al estudiante más cerca del maestro, sería algo que también se puede usar como una acomodación.

¿Que pasos puede tomar un padre si piensa que su hijo necesita acomodaciones?

Yo le recomendaría a un padre que hable con el maestro o la maestra del estudiante. Muchas veces, las acomodaciones que el estudiante necesita se pueden tomar en cuenta con el maestro, y el maestro seria la persona indicada para proveer esas acomodaciones dentro del salón. Claro, si el padre como quiera piensa que hay un tipo de discapacidad, entonces el segundo paso sería hablar con el director. De momento que usted habla con el director, tiene la escuela cuarenta y cinco días para evaluar al estudiante, y luego tiene treinta días para juntar el comité de servicios especiales. En esa junta, cual se le invitaría al padre, entonces ahí se tomarían determinaciones en cuento al tipo de ayudas especiales que requiere el estudiante.

¿Cuales son algunos mal entendimientos de las acomodaciones?

Las acomodaciones son un tipo de estrategia que se

usan con cada estudiante para tratar de ayudarles a entender a su nivel apropiado. Ya sea que el estudiante sea un estudiante del octavo/ séptimo año, son estrategias que les ayudan a entender el mismo material que los demás estudiantes que están en ese año escolar. Una modificación es completamente lo opuesto. Eso sería un cambio en la expectativa para cada estudiante a consecuencia de la discapacidad del estudiante. Entonces, por ejemplo, si tenemos un estudiante que está en el séptimo año pero su nivel de discapacidad solo le permite que aprenda a un nivel de tercer año, entonces le estamos cambiando su nivel de expectativa. Entonces, a consecuencia de eso, el maestro, el director, todo el comité de servicios especiales tiene que determinar que tipo de aprendizaje se le va a otorgar a ese estudiante en cuanto su discapacidad. Esa sería la gran diferencia entre una acomodación y una modificación.

¿Es requerido que todos los maestros implementen las acomodaciones?

Si, en cuanto la ley, todos los maestros tienen que implementar las acomodaciones.

¿Si algún padre no está de acuerdo con la decisión del comité, que puede hacer?

Bueno, como toda junta con cualquier padre, siempre tratamos de tener una Buena relación con los papas. Pero también estamos conscientes que no siempre podemos llegar a un mismo acuerdo. Todo padre tiene derecho de inicialmente pedir los servicios de educación especial pero también tiene el derecho a decir, "ya no más. No queremos más los servicios de educación especial." Y terminar toda vinculación con los servicios de educación especial del distrito. Entonces cuando eso pasa, se termina todo tipo de esa ayuda de educación especial para ese estudiante. Claro, si después de que el comité se junte, el padre como quiera no está de acuerdo pero quiere que su hijo se quede en servicios especiales, entonces podemos tener una mediación, o una audiencia legal para platicar de la decisión que se hizo sobre la educación del estudiante.

Si algún padre piensa que los derechos civiles de su estudiante han sido violados, entonces el padre tiene todo el derecho de ir a la oficina de "Civil Rights" y de meter una queja en contra de la escuela y contra el distrito escolar. ■



Scan the QR code above to watch a video on this article.



3 Do You Meet the Criteria for 'Associated' Disability?

An employee who believes that he or she may have been discriminated against due to an associated disability should first look to what criteria must be met. Listed below are a few basic points to keep in mind. The list is not all inclusive and an employee should seek legal counsel before considering a legal claim against their employer.



Employee must have an association with a person with a disability.



Employer must know of the employee's association with the disabled person.



The Employer has taken adverse actions against the employee, such as termination.



An employee is still required to satisfy the attendance and tardiness policies of the employer. Absence due to caring for the disabled is not protected. However, the employee may use the Family and Medical Leave Act under certain circumstances. In addition, the employee is not entitled to any accommodation to take care of the person with a disability.

FACULTY SPOTLIGHT: ASSOCIATIONAL DISABILITY

GUEST FROM THE COLLEGE OF LAW

Professor Michael Maslanka is an Assistant Professor of Law at UNT Dallas College of Law and is widely regarded as one of the top employment law practitioners and authors in Texas. In this video, Professor Maslanka discusses the Americans with Disabilities Act, focusing on the aspect of “associational” disabilities. He also explains how to file a complaint with the Equal Employment Opportunities Commission and the Texas Workforce Commission.

Today, I would like to talk about unlawful discrimination against an employee who is associated with a person considered disabled under the Americans with Disabilities Act. This is called the ADA for short. The ADA became law in 1990 and prohibited discrimination against those with disabilities. The ADA got a major facelift from congress in 2008. The law covers 40 million Americans.¹ Now, both the 1990 and 2008 versions contain a prohibition against discrimination against an employee who is associated with a person who has a disability. The ADA states:

“It is unlawful for a covered entity to exclude or deny equal jobs or benefits to otherwisediscriminate against an employee because of a known disability of an individual with whom the employee is known to have family, business, social or other relationship association.”

Let’s translate that statement; what is a “covered entity”? That is an employer with 15 or more employees. What does the statement mean when it says, “a person with a disability”? That’s one of the 40 million people we talked about earlier; and disability covers everything from cancer to infertility

to heart ailments and so much more. It is important to know that under the law, the employer must know that the employee is associated with such a disabled person. Now, what does “association” mean? Notice how broadly the law is written. The association can be based on all sorts of relationships: family, business, or social. And here’s the whopper that congress put in the law: the law also protects other relationships or associations. That covers a lot of territory and Congress meant it to. When the law was proposed, Congress rejected an effort to limit association to relatives by blood or

¹ At the time the law was enacted, it affected 40 million Americans with disabilities. More recently, according to the Survey of Income and Program Participation (SIPP) data, approximately 54 million Americans have a disability. <https://adata.org/faq/how-many-people-united-states-have-disability>.

marriage or adoption. So the idea of association encompasses, for example, discrimination against an employee who does volunteer work with an AIDS patient based upon fear that the employee poses a risk to fellow employees because of that situation.

Now, what situations most often arise that trigger the protections of the law? There are three. The first situation: when an employer fires an employee or takes discriminatory action against them because the employee has a seriously ill family member, and the employer is concerned about increased medical premiums.

The second situation is called the distraction theory. Now, the distraction theory is triggered when an employer takes an adverse employment action against an employee because the employer assumes that the employee won't be able to concentrate at work or

that the employee will miss too much work tending to the needs of a family member. Here's the bottom line: assumptions are not allowed.

The third situation is triggered when the employer believes that the employee will catch the same disease or ailment with whom they are associated.

Now, there are two things to keep in mind. First, an employee is still required to satisfy the attendance and tardiness policies of their employer. Absence due to caring for the disability and the person with the disability is not protected, even though the employee may be able to use the Family Medical Leave Act in certain circumstances. Second, keep in mind that the employee is not entitled to any accommodations to take care of the person with a disability.

What do you do if you think your employer has violated the law? You

absolutely must file a complaint with the Equal Employment Opportunity Commission, or EEOC, within 300 days from the date that you believe you were the subject of discrimination. Within 180 days, the Texas Workforce Commission will investigate and often attempt a resolution. The key point: you must file a complaint with one of these agencies before you bring a lawsuit.

The final point is very important; as we teach our law students, make sure you don't just understand the law, but why we have the law. Why is this law? Congress understood that the disabled often live with unnecessary shame and fear because of their disabilities, so they wanted to make sure that their support networks remained intact. ■

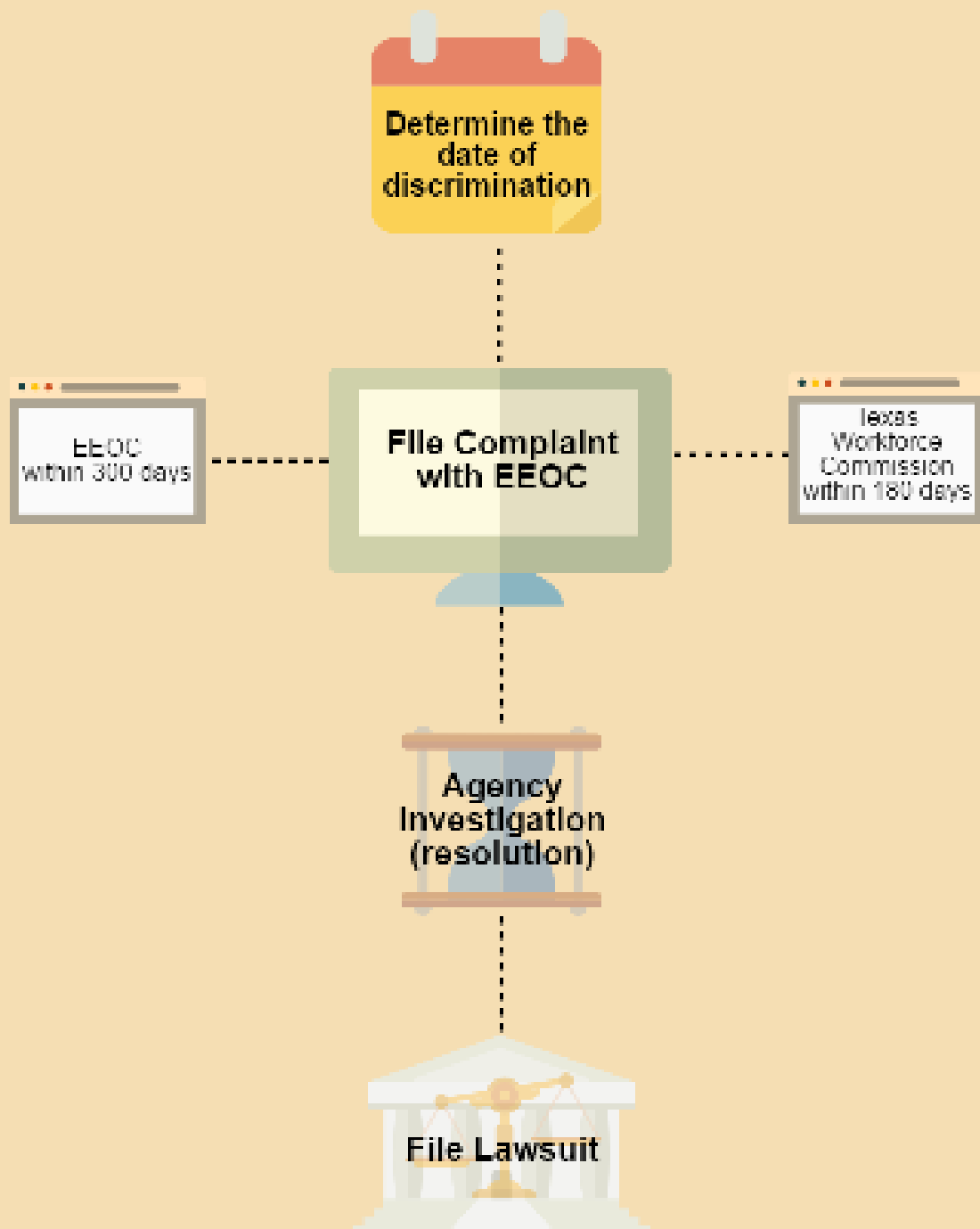
The 3 Most Common Triggers for Employer Discrimination

- Termination of an employee who has an ill family member
- "Distraction Theory" -- the employer assumes the employee will have substandard work performance or excessive missed days of work
- The employer believes the employee will also contract the same disease or disability



“It is unlawful for a covered entity to exclude or deny equal jobs or benefits to or otherwise discriminate against an employee because of a known disability of an individual with whom the employee is known to have a family, business, social or other relationship association.”

4 What do you do if you think your employer has violated the law?



Note: Must file complaint before filing a lawsuit

SOURCES

Service Pets Video

Texas Workforce Commission, Tips & Tools – About Service Animals, (Sept. 20, 2016), <http://www.twc.state.tx.us/jobseekers/tips-tools-about-service-animals>

U.S. Dept. of Justice, Civil Rights Division, Disability Rights Section, ADA Requirements: Service Animals, (July 2011), https://www.ada.gov/service_animals_2010.htm

U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Frequently Asked Questions about Service Animals, (July 2015), https://www.ada.gov/regs2010/service_animal_qa.html

Office of the Governor Greg Abbott, Texas Disability Law – Service Dogs, (2016), http://gov.texas.gov/disabilities/resources/assistance_animals

Associational Disability

29 CFR § 825, The Family and Medical Leave Act of 1993, (2016)

29 CFR § 1630.8, Relationship or Association with an Individual with a Disability, (2016)

Texas Workforce Commission, How to Submit an Employment Discrimination Complaint, (Feb. 24, 2016), <http://www.twc.state.tx.us/jobseekers/how-submit-employment-discrimination-complaint>

Texas Labor Code, <http://www.statutes.legis.state.tx.us/?link=LA>

Equal Employment Opportunity Commission, Filing a Charge of Discrimination, <https://www.eeoc.gov/employees/charge.cfm>

Stansberry et al. v. Air Wisconsin Airlines Corp., 651 F.3d 482 (6th Cir. 2011)

Student Accommodations in the Classroom

U.S. Dept. of Education, Office for Civil Rights, Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities, (Oct. 16, 2015), <http://www2.ed.gov/about/offices/list/ocr/504faq.html>

Austin ISD, http://www.austinschools.org/lifeskills/standards_handbook/documents/Accomodations%20and%20Modifications.pdf

Texas Education Agency, Division of Federal and State Education Policy, Notice of Procedural Safeguards, (April 2016), http://framework.esc18.net/documents/pro_Safeguards_ENG.pdf

Employee or Contractor?

U.S. Dept. of Homeland Security, U.S. Citizenship and Immigration Services, I-9, Employment Eligibility

-
- Verification, (Nov. 21, 2016), <https://www.uscis.gov/i-9>
- Internal Revenue Service, Independent Contractor (Self-Employed) or Employee?, (Nov. 28, 2016), <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>
- Internal Revenue Service, Form 1099-Misc, Miscellaneous Income, (Sept. 6, 2016), <https://www.irs.gov/uac/about-form-1099misc>
- Is Your Website ADA Compliant?
Microsoft, Windows Development Center, Accessibility, (2016), <https://msdn.microsoft.com/en-us/windows/bb735024.aspx#tools>
- U.S. Dept. of Justice, Civil Rights Division, Website Accessibility Under Title II of the ADA, <https://www.ada.gov/pcatoolkit/chap5toolkit.htm>
- W3C, Web Content Accessibility Guidelines 2.0 Checklist, <https://www.w3.org/TR/2006/WD-WCAG20-20060427/appendixB.html>
- Nicole Bremer Nash, Creating an ADA-Compliant Website, Tech Republic, (Mar. 30, 2012), <http://www.techrepublic.com/blog/web-designer/creating-an-ada-compliant-website/>
- U.S. Dept. of Justice, Civil Rights Division, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Public Accommodations, (2014), <https://www.reginfo.gov/public/do/eAgendaViewRule?publd=201404&RIN=1190-AA61>

AD