



**ASHA**  
American  
Speech-Language-Hearing  
Association

June 29, 2022

The Honorable Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Assistant Secretary Lhamon:

On behalf of the American Speech-Language-Hearing Association, I write to provide comments for updating the U.S. Department of Education's regulations at 34 C.F.R. pt. 104, implementing Section 504 of the Rehabilitation Act of 1973.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 223,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students. ASHA's mission is to make effective communication, a human right, accessible for all.

ASHA appreciates and fully supports the U.S. Department of Education's (the Department) desire to consider systematically updating these regulations for the first time in over 40 years. We support the goals of Section 504 that prohibits discrimination by reason of disability and appreciate its status as the first federal civil rights law generally prohibiting discrimination against individuals with disabilities. ASHA will provide additional comments when the Department issues a more formal notice requesting input. In the meantime, ASHA appreciates the Department for considering ways to strengthen the equal access and due process protections of Section 504 of the Rehabilitation Act.

## **Equal Access**

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### *Access to Speech-Language Services:*

Equal protection for individuals with communication and related disorders is imperative. Updated regulations should ensure individuals with disabilities receive equal access to all needed services, which may include gender affirming care services. ASHA recognizes gender affirming voice and communication services for transgender and gender diverse populations within the speech-language pathology scope of practice. ASHA members provide vital clinical services to gender diverse populations who may have speech-language disorders unrelated to their gender, as well as services to individuals whose voices do not reflect their gender expression. Individuals who attempt to modify their voice without the professional guidance of a trained speech-language pathologist (SLP), risk permanent damage to their vocal folds including polyps, nodules, and/or scarring. It is imperative that updated regulations ensure transgender individuals with disabilities and other individuals who experience difficulty participating in major life activities due to incongruence in how their voice presents receive equal access to speech-language pathology services.

### *Augmentative and Alternative Communication (AAC):*

The regulations should be modernized to explicitly support Augmentative and Alternative Communication (AAC). AAC is an area of clinical practice that supplements or compensates for

impairments in speech-language production and/or comprehension, including spoken and written modes of communication. AAC falls under the broader umbrella of assistive technology, or the use of any equipment, tool, or strategy to improve functional daily living in individuals with disabilities or limitations. AAC includes a variety of techniques and tools to help the individual express thoughts, wants and needs, feelings, and ideas, including the following: manual signs, gestures, finger spelling, tangible objects, line drawings, picture communication boards and letter boards, and speech-generating devices. AAC is augmentative when used to supplement existing speech, and alternative when used in place of speech that is absent or not functional.<sup>1</sup>

#### *Acoustic Accessibility:*

The Department should modernize language regarding communication issues such as acoustic accessibility. These regulations could solidify current effective communication guidelines already issued by the Department of Education and Department of Justice.<sup>2,3</sup> The Section 504 regulations could further incorporate the U.S. Access Board and the ADA accessibility standards to strengthen equal access.<sup>4,5</sup> Classroom acoustics (e.g., noise level and reverberation) can often pose a barrier to learning and equal opportunity for students who are deaf or hard of hearing. For example, noise level in classrooms has increased with new filtration systems due to COVID-19. These noise levels can provide a barrier for equal access for individuals with disabilities.

Improved classroom acoustics also benefit individuals with disabilities in the classroom who may have typical hearing.<sup>6,7</sup> Improved amplification systems provide benefits to teachers by allowing them to use a natural voice, free of vocal strain.<sup>8</sup>

#### **Alignment and Updated Language**

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Promulgating rules facilitating greater alignment with other statutes (e.g., the Individuals with Disabilities Education Act) and updating current regulatory language to reflect current usage and understanding is vital to ensure the provision of civil rights. Concepts such as “timely manner” or “reviewed periodically” are vague. ASHA suggests aligning such concepts with the current requirements in the Individuals with Disabilities Education Act (IDEA) within the regulatory framework of Section 504. We must also ensure that any evaluation for individuals with communication issues support the clinical judgement of the audiologist or SLP. Students must be afforded the same opportunities for self-advocacy support as those provided under IDEA.

Furthermore, accountability could be strengthened. For example, ensuring that compliance audits always include students who are deaf and hard of hearing. There needs to be specific requirements to collect disaggregated data for all student groups who are served under Section 504, including their performance on state academic assessments. These types of supports can align with a communication plan that looks at equitable access and an individual’s primary communication method. Allowing for a secondary student’s 504 plan to immediately qualify them for similar services in a post-secondary setting will strengthen their preparation and ability to advocate for themselves as they transition to post-secondary education and the workplace. ASHA also suggests the specific edits below in green and support standard legislative conforming edits with the ADA Amendments Act of 2008 and the Individuals with Disabilities Education Act of 2004 for outdated terms:

#### **104.3 Definitions.**

(j) ~~Handicapped person~~ **Individual with a disability** -- (1) ~~Handicapped persons~~ **Individual with a disability** means any person who (i) has a physical or mental impairment which

substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means (A) any **genetic or acquired**, physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory **and digestive, including the aerodigestive tract** ~~including speech organs~~; cardiovascular; reproductive, ~~digestive~~, genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as **psychiatric disorder, developmental disabilities and specific learning disabilities**. ~~mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.~~

**104.35 Evaluation and placement.**

(1) **Any tests** and other evaluation materials, **procedures, or methods** have been validated for the specific purpose **and population(s)** for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) **not use any single measure or assessment as the sole criterion for determining an appropriate educational program or support for the child; and**

(3) **use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.**

(4) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(c) **Placement procedures.** In interpreting evaluation data and in making placement decisions, a recipient shall (1) ~~draw upon information from~~ **use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information sources**, including **cognitive abilities aptitude** and achievement tests, **information provided by the parent or guardian**, teacher recommendations, physical condition, social, ~~or~~ cultural, **or linguistic** background, and adaptive behavior **across settings**, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

Thank you for the opportunity to provide these comments and lend our members' expertise to help further inform the Department's deliberative process. If you or your staff have any questions, please contact Bill Knudsen, ASHA's director of education policy, at [bknudsen@asha.org](mailto:bknudsen@asha.org).

Sincerely,



Judy Rich, EdD, CCC-SLP, BCS-CL  
2022 ASHA President

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<sup>1</sup> Elsahar Y, Hu S, Bouazza-Marouf K, Kerr D, Mansor A. *Augmentative and Alternative Communication (AAC) Advances: A Review of Configurations for Individuals with a Speech Disability*. *Sensors (Basel)*. 2019 Apr 22;19(8):1911. doi: 10.3390/s19081911. PMID: 31013673; PMCID: PMC6515262.

<sup>2</sup> U.S. Department of Justice, U.S. Department of Education. (Nov. 2014) *Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools*. <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>.

<sup>3</sup> U.S. Department of Justice. (Jan. 2014). *ADA Requirements: Effective Communication*. <https://www.ada.gov/effective-comm.htm>.

<sup>4</sup> U.S. Access Board. (n.d.). *Information and Communication Technology*. <https://www.access-board.gov/ict.html>.

<sup>5</sup> U.S. Access Board. (2010). Americans with Disabilities Act (ADA) Standards. <https://www.access-board.gov/ada/>.

<sup>6</sup> Smaldino, J. J., Crandell, C. C., Kreisman, B. M., John, A. B., & Kreisman, N. V. (2008). Room acoustics for listeners with normal hearing and hearing impairment. In M. Valente, H. Hosford-Dunn, & R. H. Roeser (Eds.), *Audiology treatment* (pp. 418–451). New York, NY: Thieme Medical Publishers.

<sup>7</sup> Seep, B., Glosemeyer, R., Hulce, E., Linn, M., & Aytar, P. (2000). *Classroom acoustics I: A resource for creating learning environments with desirable listening conditions*. Melville, NY: Acoustical Society of America.

<sup>8</sup> Kristiansen, J., Lund, S. P., Persson, R., Shibuya, H., Nielsen, P. M., & Scholz, M. (2014). *A study of classroom acoustics and school teachers' noise exposure, voice load and speaking time during teaching, and the effects on vocal and mental fatigue development*. *International Archives of Occupational and Environmental Health*, 87, 851–860.