



November 23, 2009

On behalf of APSE, an organization focused exclusively on promoting and advancing employment opportunities for individuals with disabilities in the community, the following comments are being submitted on the proposed regulations issued by the EEOC, and published in the Federal Register on September 23, 2009, to implement the ADA Amendments Act of 2008 (ADAAA).

**General comment:** APSE would like to applaud the EEOC for issuing proposed regulations that strongly reinforce the intent of Congress to amend the ADA, to ensure that the ADA is providing strong broad-based civil rights protections for people with disabilities, in line with the original intent of the ADA. These new regulations will help ensure that people with disabilities have the necessary protections against discrimination, and that cases of discrimination will be decided on the merits of the case, rather than on whether an individual meets the definition of “disability”. The many examples included within the proposed regulations do an excellent job of illustrating and reinforcing the intent of the regulations, and assist in both interpreting the regulations, and avoiding mis-interpretation by the courts and hearing officers. APSE also endorses the concept and inclusion of the statement throughout the regulations that “determination of whether an individual has a disability does not depend on what an individual is able to do in spite of an impairment.” APSE would also like to applaud the EEOC for expanding beyond the language of the ADA Amendments Act, in terms of clarifying and specifying the conditions covered under the ADA.

#### **Comments on specific sections:**

**1630.2 (i):** APSE endorses the expansion of the definition of Major Life Activities, and in particular these specific sections.

- 1630.2 (i) (1): APSE strongly supports the proposed expansion of the definition of major life activities beyond the statutory language in the ADAAA, to include sitting, reaching, and interacting with others.
- 1630.2 (i) (2): APSE endorses the proposed expansion of the definition of major bodily functions beyond the statutory language in the ADAAA, to include hemic, musculoskeletal, special sense organs and skin, engitourinary, and cardiovascular, and explanatory language within this section.
- 1630.2 (j) (3) (ii) (E): *Ameliorative Effects of Mitigating Measures Not Considered:* APSE endorses the expansion of the list of mitigating measures that may not be considered beyond the statutory language in the ADAAA, to include “Surgical interventions, except for those that permanently eliminate an impairment.”

The expansion of these definitions in the proposed regulations is very much in the spirit of Congressional intent, and the further specificity provided helps to ensure broad



coverage of the ADA, and that individuals with certain conditions will not be omitted from coverage, despite the general intent of Congress otherwise.

**1630.2 (j) (5):** *Examples of Impairments that Will Consistently Meet the Definition of Disability:* APSE endorses the inclusion of the list of impairments in this section that will consistently meet the definition of disability, which will ensure both protections for such individuals, and that discrimination complaints can focus on the merits of the actual claim. However, APSE would ask for consideration of inclusion of specific learning disabilities on this list, such as Attention Deficit Hyperactivity Disorder (ADHD), as the lack of specificity in terms of learning disabilities provides opportunities for individuals with significant learning disabilities who require the protections of the ADA, to not be covered. Example 3 under 1630.2 (j) (6) (C) does help to provide some clarification in this regard, but this is not sufficient.

**1630.2 (j) (7):** As an organization focused on advocacy for employment of people with disabilities, APSE would like to express its strong endorsement of the language regarding “the major life activity of working”. In particular, the language noting that a person will usually be substantially limited in another major life activity besides working, thus eliminating the need to consider whether the individual is substantially limited in working, helps to clarify the limits on the use of the definition in determining whether an individual has a disability. Additionally, the use of “type of work” as a replacement for “class” or “broad range” of jobs from the 1991 regulations, provides a much clearer and more straightforward mechanism for determining whether someone is substantially limited in working, and this language will help ensure individuals are properly protected against discrimination, as Congress intended.

Thank you,

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APSE