

The Impact of the Americans with Disabilities Act Amendments Act on Section 504

What School and District Leaders Need to Know About Eligibility Requirements

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SUMMARY

The number of students eligible for services and protection under Section 504 has grown significantly as a result of the Americans with Disabilities Act Amendments Act of 2008 (ADA Amendment), which became effective on January 1, 2009. The Amendment broadened the longstanding Americans with Disabilities Act's (ADA) application of disability, and specified that its provisions also apply to Section 504. Under this expanded view, it was reasonable to expect that schools would see an increase in students eligible for Section 504 plans and a potential uptick in due process claims related to allergies, diabetes, ADD/ADHD, and other impairments. In fact, according to the Office of Civil Rights Data Collection, **more than twice as many students were identified as Section 504 eligible** in 2011-12 as they were in 2001.ⁱ This surge presents a compelling need for school districts, including charter schools,ⁱⁱ to have updated and concise operating procedures, clear communication with parents, appropriate evaluation procedures, and mechanisms to develop and effectively monitor Section 504 plans for procedural compliance. Even years after the ADA Amendment was passed, many districts have yet to completely adopt its changes or conduct reviews of health plans per revised Section 504 eligibility criteria. It is expected that as districts bring their policies into compliance with the amended ADA, additional increases of eligible students will be reported.ⁱⁱⁱ

School leaders are generally conversant on the Individuals with Disabilities Education Act (IDEA) but remain relatively unfamiliar with Section 504 eligibility requirements, their impact on schools, and the significant changes in this area resulting from the ADA Amendment. Does your district have updated Section 504 eligibility procedures? Are you able to track the outcome of Section 504 and IDEA evaluations? What steps can you take to build a compliant Section 504 program?

This white paper provides school and district leaders with a primer to the changes in legislation and guidance in order to develop or revise Section 504 standard operating procedures around eligibility and will strengthen school leaders' overall knowledgebase of best practices for supporting students with special needs.^{iv}

What is Section 504?

Section 504 of the Rehabilitation Act of 1973, known as Section 504, is a civil rights law that prohibits discrimination based on disability in any program or activity that receives federal financial assistance. As the law simply states in one sentence, Section 504 requires that:

No otherwise qualified individual... shall, solely by reason of [her or his disability], be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance... [29 U.S.C. §794(a), 34 C.F.R. §104.4(a)]

This law conforms to the definition of disability, or impairment, under the ADA and is designed to improve access, in part, to accommodations for students with disabilities in schools.^v To be covered under Section 504, a student must be between the ages of 3 and 22, and "qualified," i.e., found to have a disability through an evaluation process. As recipients of financial assistance from the U.S. Department of Education (ED), school districts must comply with ED's more specific 504 implementing regulation. Though Section 504 does not provide funding for special education, accommodations or related services, the regulations do permit the federal government to suspend or terminate ED funding from schools or districts that do not comply with the law.^{vi}

What changed as a result of the ADA Amendment?

The definition of “impairment” under Section 504 is wide-ranging. Any physical or mental impairment generally recognized by doctors or psychologists can be the basis for qualifying a student, given that impairment **substantially limits one or more of their major life activities**. Under 504, the major life activity can relate not only to academic learning but to functioning socially, physically, and behaviorally.^{vii}

Because school districts have already been providing a range of accommodations to students with disabilities under Section 504, the ADA has not made any substantial changes to what most districts already provide in terms of supports. **However, the amended law provides an important remedy for children who were previously not eligible and may now qualify for the law’s protection, services, aids, or accommodations.**^{viii} Specific changes to the law that impact eligibility include:

- The **definition of “major life activities.”** The term was expanded to include, e.g., learning, reading, concentrating, and thinking. Additionally, the definition of “major bodily functions” was expanded to include neurological and brain functions. The following chart shows the major life activities added by the ADA Amendment.

Major Life Activity	
<u>Already included under Section 504</u>	<u>Added to Section 504 by the Amended ADA</u>
Caring for oneself	Reading
Performing manual tasks	Concentrating
Walking	Thinking
Seeing	Communicating
Hearing	Eating
Speaking	Sleeping
Breathing	Standing
Learning	Lifting
Working	Bending

- **Use of effective mitigating measures cannot be the basis for denying 504 eligibility.** For example, taking medication or being allowed extra time when taking tests to accommodate a learning disability is not sufficient reason to deny 504 eligibility.
- The analysis of substantial **limitation on a major life activity is broadly, rather than narrowly, interpreted.** Congress intended that this analysis not demand an extensive analysis.
- **Conditions that are episodic or in remission are covered when considering their active phase.** For example, a student with a specific medical condition may be affected by his or her symptoms differently and at different times and under different conditions. The law does not disqualify the student from protection during any periods of inactivity.

1) PHYSICAL OR MENTAL IMPAIRMENT

Section 504 refers to two broad areas of impairments: physical and mental. The regulation provides a nonexclusive list of examples under each type of impairment.^{ix}

- Physical Impairment means any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems. Examples of body systems include neurological, musculoskeletal (the system of muscles and bones), special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine. This

definition includes conditions such as Type 1 diabetes, cerebral palsy, seizures, heart disease, Tourette's Syndrome, sickle cell disease, hearing loss, and visual impairments.

- Mental Impairment means any mental or psychological disorder, such as intellectual disability, attention deficit hyperactivity disorder (ADHD), depression, conduct or other behavior disorders, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

2) MAJOR LIFE ACTIVITIES

A student's impairment must substantially limit one or more major life activities. The Section 504 list of major life activities that a student's impairment may substantially impact is not exhaustive. Examples include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Major life activities also include the operation of major bodily functions, which include but are not limited to functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

In the school setting, all major life activities are relevant **even if they are unrelated to learning**. That is, a student may have an impairment that substantially limits a major life activity related to areas other than learning. Accordingly, the student may be a good learner but have other major life activities that the impairment substantially limits. For example, a student with ulcerative colitis is substantially limited in the operation of a major bodily function, the digestive system.^x

3) SUBSTANTIAL LIMITATION

Congress's stated purpose for amending the ADA was to reject Supreme Court rulings in employment cases and to clarify Congress's standard of interpretation. Congress disagreed with the Court's findings that the term "substantially" was to be interpreted *strictly* with a demanding standard. Also, it disagreed that impairments must *prevent or severely restrict* individuals from doing activities that are of "central importance" to most people's daily lives.

To be considered substantially limited, an impairment does not need to prevent, or severely or substantially restrict a major life activity.^{xi} Instead, Congress established that the question of whether an individual's impairment is a disability under the ADA "should not demand extensive analysis." Although Congress' intention was to correct employment decisions, the ADA amendment controls how school districts are to address this issue under Section 504.

Of note is the ADA regulation issued by the Equal Employment Opportunity Commission (EEOC). That regulation identifies conditions such as diabetes, cancer, HIV, post-traumatic stress disorder, and intellectual disabilities as impairments, among others, that by their inherent nature will virtually always be found to impose a substantial limitation on a major life activity and, therefore, involve simple and straightforward assessment.^{xii}

Mitigating Measures

The interpretation of "substantial limitation" is guided by the ADA Amendment's revised consideration of mitigating measures. Mitigating measures are adjustments, accommodations, or services that eliminate or reduce the symptoms of impairments. For example, health plans are frequently used to document protocols necessary to alleviate the effects of medical conditions, such as diabetes, asthma, allergies, etc. Also, general education tiered interventions, outside tutoring, and mental health services may be used as mitigating measures to support a student's behavior and/or learning.

Such mitigating measures often help students to address the negative effects of an impairment. Prior to the ADA Amendment, Section 504 eligibility took into account the effects of these mitigating measures, and when effective would preclude the law's coverage. The ADA Amendment reversed this standard and the ameliorative effects of mitigating measures, such as those in identified in health plans or academic/mental health supports, can no longer be taken into account. An exception to this general rule is the use of ordinary glasses or contact lenses.

The 2008 ADA Amendments reversed the prior mitigating measures standard so that ameliorative effects can no longer be taken into account when determining eligibility. This change has been one reason for the increased number of students now 504 eligible.

Post ADA Amendment, when considering whether a student's impairment is substantially limiting a major life activity, the decision cannot be based on how well the student functions or performs with the use of medication (e.g., for ADHD, diabetes), compensatory strategies (e.g., behavior techniques or learned strategies), prosthetic devices, assistive technology/devices, low-vision devices (e.g., those that magnify or enhance a visual image) or other mitigating measures. For example, a student with an allergy that requires shots to manage the condition would be covered under 504 if, without the shots, the allergy would substantially limit a major life activity, such as breathing, concentrating, thinking, etc.^{xiii} When mitigating measures are successful, a 504 plan may not be necessary unless there are accommodations or other services/supports the student needs when, for example, the student's medication is not consistently effective.

Furthermore, students with impairments who are earning good grades may nevertheless be 504 eligible. For example, students with an attention deficit hyperactivity disorder (ADHD) or dyslexia who manage their own adaptive strategies, or receive general education accommodations or outside tutoring to lessen the effect of the deleterious impact of their disability, may have impairments with substantial limitation on major life activities when considered without regard to these mitigating measures.^{xiv}

Episodic, Remission, and Temporary Impairments

For impairments that are episodic (e.g., depression, Crohn's disease) or in remission (e.g., cancer), the review of substantial limitation is based on the impact of the student's impairment on the major life activity

Given that school districts are required to make an individualized determination of a student's eligibility, and 504's broadened eligibility standard, school personnel should err on the side of caution and conduct an evaluation to determine whether an impairment will last long enough to qualify.

when active. School personnel may see some students only with the benefits of their medication, or when their impairment is inactive. For example, a student with bipolar disorder would be 504 eligible if during manic or depressive episodes the student is substantially limited in a major life activity, e.g., thinking, concentrating, neurological function, or brain function. Temporary impairments (e.g., broken writing arm, broken leg, etc.) must be considered based on their expected duration and severity.

Generally, a temporary impairment of about six months or longer would be considered to have a substantial limitation on a major life activity if this would have been the decision if the impairment was chronic or permanent. Temporary impairments expected to last less than six months may also be substantially limiting, depending on the student's age, major life activity, and impairment. For example, OCR investigated a case that involved a student who fractured his ankle and required surgery. The student needed to use crutches for about ten weeks and his mother requested accommodations to address his limited mobility. OCR found that the physical impairment triggered the district's obligation to conduct a 504 evaluation of the student. Although the district developed a health plan for the student, OCR found that the process did not follow the 504's

evaluation requirements.^{xv} Section 504 plans are developed when necessary to designate the accommodations and other supports students need when their impairments are active.

4) QUALIFICATION

When reviewing a student's impairment and the extent to which it impacts a major life activity, 504 teams need to consider typical same-age students without impairments and the level of their performance in the same major life activity. In other words, they should measure the student against same age, typical peers.

According to OCR:

In most cases, application of these rules should quickly shift the inquiry away from the question of whether a student has a disability (and thus is protected by the ADA and Section 504) and toward the school district's actions and obligations to ensure equal educational opportunities. While there are no per se disabilities under Section 504 and [ADA], the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a student with diabetes, epilepsy, bipolar disorder... has a disability under Section 504 and [ADA].^{xvi}

School teams should keep in mind Congress's intent for the substantial limitation standard is to be construed in favor of broad coverage.

What are the similarities and differences between IDEA and Section 504?

Section 504 and IDEA have common requirements for identification, evaluation, provision of services, placement in the least restrictive environment, and procedural safeguards. Both are designed to appropriately identify and provide supports and services for students with eligible disabilities. There are, however, several important differences between their requirements.

- **Provision of Federal Funds.** Section 504 does not provide any federal funds for schools or districts to meet requirements. One of the primary purposes of IDEA is to provide some financial support for the provision of special education and related services. There are no federal or state funds to support 504, as it is considered to be a civil rights statute.
- **Type of Federal Funds.** The Section 504 regulation applies to recipients of *any* ED funds; IDEA applies only to recipients of IDEA funds.
- **Eligibility.** Section 504 uses broad terms to define disability in specific terms. Students eligible under 504 must meet a general definition (have physical or mental impairments that substantially limit a major life function), and is non-exhaustive. These students are not required to need special education instruction to meet 504 eligibility. Eligible IDEA students must have at least 1 of 13 specified disability categories and need special education services to receive a free and appropriate education (FAPE).^{xvii}
- **Requirements.** While Section 504 requirements are not as complex and comprehensive as those of IDEA, the requirements are similar in nature. For example, both 504 and IDEA have processes for identification and evaluation, a FAPE requirement that is designed through an individualized written plan, and procedural safeguards. A table highlighting Section 504 and IDEA similarities and differences is provided below.

IDEA covers only students with disabilities who require special education services to benefit from an education. Under 504, a student with disabilities is protected even if (s)he does not need special education services, needs only related aids and services, or does not need any services or support.

Section 504 is broader than IDEA. For example, a student may have a health condition that substantially limits a major life activity and not require any special education services. Such a student is not eligible under IDEA but is 504 eligible. The graphic below shows the intersection between students eligible under 504 and IDEA.



Brief Comparison of IDEA and 504 Requirements

	IDEA	Section 504
Purpose	<ul style="list-style-type: none"> Federal statute whose purpose is to ensure a free and appropriate education (FAPE) for children with disabilities who fall within one of the 13 specific disability categories as defined by the law 	<ul style="list-style-type: none"> Civil rights, anti-discrimination law which protects the rights of individuals with disabilities in any agency, school or institution receiving ED federal funds to provide eligible students access to FAPE.
Overall Provisions	<ul style="list-style-type: none"> Provides for specially designed instruction and related services students need to benefit from their special education Requires an Individualized Education Plan (IEP) 	<ul style="list-style-type: none"> Broader requirements than IDEA Requires reasonable accommodations be made based on the student's needs Based on an individually designed plan Prohibits different treatment or discrimination based on disability, e.g., bullying
Funding	<ul style="list-style-type: none"> Provides federal funds to support special education/related services Compliance with provisions required for continued funding 	<ul style="list-style-type: none"> No federal funds to support services IDEA funds may not be used to serve children found eligible under Section 504 only General education funds can be used to fund Section 504. Also, federal/state Title I funds may be used if purpose meets criteria
Eligibility	<ul style="list-style-type: none"> Schools have to evaluate students before determining their eligibility for services and before deciding which services are appropriate Requires extensive assessment 13 disability categories Must need special education services, taking into account the positive effect of mitigating measures 	<ul style="list-style-type: none"> Mental or physical impairment substantially limiting a major life activity; or be regarded as having a disability; or having a record of a disability Cannot take into account positive effect of mitigating measures May just need related aids/services or other accommodations
Evaluation/Reevaluation	<ul style="list-style-type: none"> Full comprehensive evaluation assessing all areas related to suspected or known disability Reevaluation required every 3 years 	<ul style="list-style-type: none"> Schools are required to periodically evaluate students. Section 504 does not specify a time period but OCR relies on IDEA and state requirements Evaluation draws on info from a variety of sources in areas of concern by group

		knowledgeable about student, evaluation data, and placement options
Change in Placement	<ul style="list-style-type: none"> • IEP meeting required before any change in placement 	<ul style="list-style-type: none"> • Reevaluation required before change in placement
Common Requirements	<ul style="list-style-type: none"> • Identification, evaluation, provision of services, placement in the least restrictive environment, and procedural safeguards (including notice, consent for (re)evaluation and initial placement/services, inspection of records, impartial hearing process.) Cannot override consent for initial placement by requesting a due process hearing under IDEA, but can under 504 	
Independent Evaluations	<ul style="list-style-type: none"> • Required based on IDEA criteria, and must consider if obtained by parents • Allows independent evaluations at the district's expense 	<ul style="list-style-type: none"> • Not required, although must consider if obtained by parents • Does not have a provision governing independent evaluations at the district's expense
Individualized Written Plan	<ul style="list-style-type: none"> • Individualized Education Program (IEP) 	<ul style="list-style-type: none"> • Section 504 plan • Implementation of IEPs under IDEA is one means of meeting 504 requirements
Service Delivery	<ul style="list-style-type: none"> • Specific content addressing the disability directly and specifying educational services to be delivered, mandating transition planning for students 16 • "Appropriate Education" is reasonably calculated to provide educational benefit to the student (as interpreted by the U.S. Supreme Court) • Related services are provided as required for the student to benefit from special education 	<ul style="list-style-type: none"> • Requires that reasonable accommodations, supports and auxiliary aides and services be made for eligible students to enable them to participate in school programs and activities
Team Members	<ul style="list-style-type: none"> • Specific participants required, including parents 	<ul style="list-style-type: none"> • Group of individuals knowledgeable about the child, the evaluation information and placement • Recommended to include parents
Procedural Safeguards	<ul style="list-style-type: none"> • Detailed procedures apply to all students eligible for IDEA services, including those "deemed" eligible 	<ul style="list-style-type: none"> • Regarding identification, evaluation, or educational, procedural safeguards include notice, examination of relevant records, impartial hearing, and a review procedure. Compliance with IDEA procedural safeguards is one means of meeting this requirement. • Does not apply to students with drug addiction unless in rehabilitation programs
Enforcement	<ul style="list-style-type: none"> • ED's Office of Special Education Programs (OSEP), which can terminate IDEA funds; State Department Education oversight 	<ul style="list-style-type: none"> • ED's Office for Civil Rights, which can move to terminate all ED funds

What actions can districts take to implement the ADA Amendments effectively and manage a growing Section 504 population?

The ADA Amendment has unquestionably had an impact on the field of education and opened the potential for school districts to serve a substantially larger Section 504 population. As a result, it is important for school districts to have processes and systems in place to ensure the appropriate students referred for 504 are evaluated in a timely manner and monitored through a 504 plan, as appropriate. Further, districts must not underestimate the effect the intersection between IDEA and 504 has on policy, procedures, and resources and should take necessary precautions to develop a robust program that withstands scrutiny under an OCR review or claim.

The following is a list of key actions that districts can undertake in order to enhance their 504 program and compliance under the law.

1) Develop or Revise 504 Standard Operating Procedures

One of the most useful tools to streamline processes, educate staff, and ensure compliance with Section 504 is to develop a standard operating procedure manual (SOPM). This manual should list all of the tasks that are essential for compliance with Section 504, how to do these tasks, and who is responsible for the tasks listed. It should be user-friendly and accessible to school staff, in addition to parents and other relevant stakeholders. The benefits of having an SOPM is that it can be used to guide new and existing staff training, and assist continuity and consistency of implementation across schools.

When creating or revising the manual, districts should collaborate with principals, parents, special education and general education staff, among others. If feasible to develop, web-based SOPMs enable district personnel to revise material as needed, and to link **information and resources helpful for each stakeholder group.** Content should include, at minimum, the legal framework of Section 504 and the ADA, eligibility criteria, the evaluation process, and the development and monitoring of 504 plans. If feasible, districts should also consider publishing supplemental one-page brochures for further access to this information. Section 504 **SOP manuals and training guides created before 2008 need to be reviewed** and revised to align to the amended ADA.

2) Conduct Professional Development

In order to remain in compliance with 504, districts should develop an ongoing and systemic training plan so that school staff are aware of requirements under the law and can provide the most appropriate supports for students. If it has not already been done, districts should first conduct training for school staff on the purpose and intent of Section 504 and the changes resulting from the ADA Amendment. The training plan should include a differentiated learning program for all educators, paraprofessionals, administrators, parents/families, etc. As part of the trainings, districts may want to consider including ways for school personnel to share across school sites their successful practices and how to problem-solve issues.

3) Utilize an Electronic Tracking System

An electronic system enables personnel to easily report Section 504 data to the Office for Civil Rights, analyze quantitative data by school and district level, and allocate resources appropriately. These data not only allow activities to be closely monitored, but also to identify trends which can assist staff in better serving the district's Section 504 population.

This activity is greatly facilitated by an electronic system that enables district personnel to:

- Capture referral and consent data points
- Support processes for evaluations, eligibility decisions, and 504 plans
- Cross-reference IEPs and/or health plans
- Document team meetings
- Support the development of all necessary forms, etc.

Additionally, using a robust system that also tracks IDEA evaluations and health plans allows for district personnel to move directly into a Section 504 evaluation, thereby ensuring students who were found to have a disability, but not require specially designed instruction, receive appropriate support through a Section 504 plan.

4) Proactively Plan for Resource Allocation

As reported by the Office for Civil Rights, the number of students who qualify under Section 504 is continuing to increase. This trajectory is not expected to end in the near term. Districts should routinely review the accommodations provided to students with 504 plans and reallocate resources as necessary.

Conclusion

School districts can use the opportunities described above to address the needs of students with disabilities and to build a compliant Section 504 program.

PCG has demonstrated experience working across school districts and state departments of education nationally and can be a valuable partner for those organizations that need additional guidance around Section 504 or require a system to the support monitoring of student plans.

About PCG

Public Consulting Group, Inc. (PCG) is a leading public sector consulting firm that partners with health, education, and human services agencies to improve lives. Founded in 1986 and headquartered in Boston Massachusetts, PCG has nearly 2000 professionals in more than 60 offices around the US, in Canada and in Europe. PCG's Education practice offers consulting solutions that help schools, school districts, and state education agencies/ministries of education to promote student success, improve programs and processes, and optimize financial resources.

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ⁱ The school year 2011-12 is the latest year for which data is available from the Civil Rights Data Collection website.

ⁱⁱ OCR *Dear Colleague Letter: Charter Schools* (May 14, 2014).

ⁱⁱⁱ <http://www.advocacyinstitute.org/resources/504analysisCRDC2012.shtml>, accessed December 15, 2016.

^{iv} This guidance provides information about ADA and Section 504, and how these laws interact with the Individuals with Disabilities Education Act. It is based on federal regulations, guidance issued by the Office for Civil Rights (OCR), U.S. Department of Education (ED), the Office of Special Education Programs (OSEP), and the Department of Justice (DOJ); agency findings and settlement agreements; and case law.

^v The definition of disability under ADA is explored in the sections below.

^{vi} Section 504 does not directly include this enforcement provision; however, Section 504 references this and related provisions from Title VI of the Civil Rights Act of 1964.

^{vii} Martin, J. (2010). Determining Eligibility Under Section 504: Fundamentals and New Challenge Areas

^{viii} Council of Parent Attorneys and Advocates, Inc. (COPAA), 2008,
<http://www.copaa.org/?page=504ADA&hhSearchTerms=%22adaa%22>

^{ix} The regulatory provision does not provide an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

^x OCR: Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools.

^{xi} *id.*

^{xii} PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT, retrieved from <https://www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol4/xml/CFR-2011-title29-vol4-part1630.xml>

^{xiii} OCR: Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools.

^{xiv} OCR: *Dear Colleague Letter and Resource Guide on Students with ADHD.*

^{xv} OCR Letter of Findings: *Roselle Park (NJ) Sch. Dist.*

^{xvi} OCR: *Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools*, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

^{xvii} The IDEA disability areas are: autism, blind/deaf, developmental delay, hard of hearing/deaf, emotional disturbance, intellectual disability, multiple disability, other health impairment, orthopedic impairment, speech/language impairment, specific learning disability, traumatic brain injury, and visual impairment/blind.



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