



Section 504 of the Rehabilitation Act of 1973: Prohibiting Discrimination Against Individuals with Disabilities in Programs or Activities Receiving Federal Assistance

Nancy Lee Jones
Legislative Attorney

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Summary

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against an otherwise qualified individual with a disability solely by reason of disability in any program or activity receiving federal financial assistance or under any program or activity conducted by an executive agency or the U.S. Postal Service. Section 504 was the first federal civil rights law generally prohibiting discrimination against individuals with disabilities. This report examines Section 504, recent amendments to the definition of disability, Section 504's regulations, and Supreme Court interpretations. Section 504's differences with the ADA, and its relationship to the Individuals with Disabilities Education Act (IDEA), are also discussed.

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Introduction

Section 504 of the Rehabilitation Act of 1973¹ prohibits discrimination against an otherwise qualified individual with a disability solely by reason of disability in any program or activity receiving federal financial assistance or under any program or activity conducted by an executive agency or the U.S. Postal Service. Section 504 was the first federal civil rights law generally prohibiting discrimination against individuals with disabilities.² The concepts of Section 504 and its implementing regulations were used in crafting the Americans with Disabilities Act (ADA)³ in 1990. The ADA and Section 504 are, therefore, very similar and have some overlapping coverage but also have several important distinctions. For example, Section 504 is limited to programs receiving federal funds or the executive agencies and the Postal Service while the ADA broadly covers the private sector regardless of whether federal funds are involved and does not cover the executive agencies or the Postal Service. The ADA Amendments Act of 2008, P.L. 110-325, amended the definition of disability in the ADA and the definition of disability applicable to Section 504.⁴

This report examines Section 504, the recent amendments to the definition of disability, Section 504's regulations, and Supreme Court interpretations. Section 504's differences with the ADA, and its relationship to the Individuals with Disabilities Education Act (IDEA), are also discussed.⁵

Overview of Section 504

Historical Background

Although Section 504 was the first federal statute that provided broad civil rights protections for individuals with disabilities, there was very little discussion of its meaning or importance during its enactment in 1973. The most detailed discussion was during congressional debate when Senator Humphrey observed,

¹ 29 U.S.C. §794. Title V of the Rehabilitation Act contains other sections relating to disability discrimination law. Section 501, 29 U.S.C. §791, requires federal agencies to establish affirmative action program plans for the hiring, placement, and advancement of individuals with disabilities. Section 502, 29 U.S.C. §792, establishes the Architectural and Transportation Barriers Compliance Board (the Access Board), which in part provides technical guidance regarding architectural, transportation, and communication barriers. See <http://www.access-board.gov/>. Section 503, 29 U.S.C. §793, provides for affirmative action in employment of individuals with disabilities in certain federal contracts. A discussion of these provisions is beyond the scope of this report.

² The National Council on Disability, the independent federal agency tasked with making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families, stated: "Section 504 of the 1973 Rehabilitation Act is acknowledged as the first national civil rights law to view the exclusion and segregation of people with disabilities as discrimination and to declare that the Federal Government would take a central role in reversing and eliminating this discrimination." National Council on Disability, "Rehabilitating Section 504" (February 12, 2003), at <http://www.ncd.gov/newsroom/publications/2003/section504.htm>.

³ 42 U.S.C. §12101 *et seq.* For a detailed discussion of the ADA see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.

⁴ For a more detailed discussion of the ADA Amendments Act see CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by Nancy Lee Jones.

⁵ 20 U.S.C. §1400 *et seq.* For a discussion of IDEA, see CRS Report RS22590, *The Individuals with Disabilities Education Act (IDEA): Overview and Selected Issues*, by Richard N. Apling and Nancy Lee Jones.

I am deeply gratified at the inclusion of these provisions which carry through the intent of original bills which I introduced, jointly with the Senator from Illinois (Mr. Percy), earlier this year, S. 3044 and S. 3458, to amend, respectively, Titles VI and VII of the Civil Rights Act of 1964, to guarantee the right of persons with a mental or physical handicap to participate in programs receiving Federal assistance, and to make discrimination in employment because of these handicaps, and in the absence of a bona fide occupational qualification, an unlawful employment practice. The time has come to firmly establish the right of these Americans to dignity and self-respect as equal and contributing members of society, and to end the virtual isolation of millions of children and adults from society.⁶

The implementation of Section 504 was not performed expeditiously. The then Department of Health, Education, and Welfare (HEW)⁷ published regulations in 1978 only after a federal court held that HEW was required to promulgate regulations⁸ and after demonstrations at HEW offices.⁹ The year 1978 also saw major amendments to Section 504.¹⁰ These amendments expanded Section 504 nondiscrimination requirements to programs or activities conducted by executive agencies, and added a new section 505¹¹ which applied the remedies, procedures and rights of Title VI of the Civil Rights Act of 1964¹² to Section 504 actions.

Statutory and Regulatory Provisions

Section 504 Statutory Provisions

Section 504 has been amended numerous times since its original enactment in 1973. The core requirement of the section is found in subsection (a). This subsection was amended by P.L. 95-602 which added the provisions regarding the regulations. Section 504(a) currently states the following:

(a) No otherwise qualified individual with a disability in the United States, as defined in section 705(20), 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 or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulations may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.¹³

⁶ 118 CONG. REC. 32310 (September 26, 1972) (Remarks of Sen. Humphrey).

⁷ HEW was divided into the current Department of Health and Human Services (HHS) and the current Department of Education (ED).

⁸ *Cherry v. Mathews*, 419 F.Supp. 922 (D.D.C. 1976).

⁹ National Council on Disability, "Rehabilitating Section 504" (February 12, 2003), at <http://www.ncd.gov/newsroom/publications/2003/section504.htm>.

¹⁰ P.L. 95-602.

¹¹ 29 U.S.C. §794a.

¹² 42 U.S.C. §2000d *et seq.*

¹³ 29 U.S.C. §794(a).

Subsection (b) of Section 504 defines the term “program or activity.” This subsection was added by P.L. 100-259 in 1988 in response to the Supreme Court’s narrow interpretation of the phrase “program or activity” in Title IX of the Education Amendments of 1972.¹⁴ The amendment clarified that discrimination is prohibited throughout the entire institution if any part of the institution receives federal financial assistance.¹⁵

Subsection (c) of Section 504 was also added by P.L. 100-259 in 1988. It contains an exception for small providers so they are not required to make significant structural alternations to their existing facilities to render them accessible if alternative means of providing the services are available. This subsection was added to clarify that P.L. 100-259 does not add new requirements for architectural modification.¹⁶

Subsection (d) of Section 504 requires that the standards used to determine whether there has been a violation of Section 504 regarding employment discrimination complaints are the same as those in the Americans with Disabilities Act. This subsection was added by P.L. 102-569 in 1992. P.L. 102-569 also substituted the term “disability” for the term “handicap.”

Definition of Disability

The definition of disability applicable to Section 504¹⁷ was amended by the ADA Amendments Act of 2008 to conform with the new definition of disability for the ADA.¹⁸ The Senate Statement of Managers noted the importance of maintaining uniform definitions in the two statutes so covered entities “will generally operate under one consistent standard, and the civil rights of individuals with disabilities will be protected in all settings.”¹⁹

The ADA definition defines the term disability with respect to an individual as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).”²⁰ Although this is essentially the same statutory language as was in the original ADA, P.L. 110-325 contains new rules of construction regarding the definition of disability, which provide that

- the definition of disability shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the act;
- the term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act;

¹⁴ *Grove City College v. Bell*, 465 U.S. 555 (1984). See also *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624 (1984).

¹⁵ For a discussion of the purpose of the amendment see S.Rept. 100-64, 100th Cong., 2d Sess. (June 5, 1987), reprinted in 1988 U.S. CODE CONG. & AD. NEWS 3 (1988).

¹⁶ *Id.*

¹⁷ 29 U.S.C. §705.

¹⁸ P.L. 110-325, §7. For a more detailed discussion of the ADA Amendments Act see CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by Nancy Lee Jones.

¹⁹ 153 CONG. REC. S. 8347 (Sept. 11, 2008)(Statement of Managers to Accompany S. 3406, the Americans with Disabilities Act Amendments Act of 2008).

²⁰ P.L. 110-325, §4(a), amending 42 U.S.C. §12102.

- an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability;
- an impairment that is episodic or in remission is a disability if it would have substantially limited a major life activity when active; and
- the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, except that the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered.²¹

The ADA Amendments Act specifically lists examples of major life activities including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The act also states that a major life activity includes the operation of a major bodily function.

Regulations

The first Section 504 regulations were promulgated by the then department of Health, Education, and Welfare (HEW) in January of 1978. Soon after this, the 1978 amendments to Section 504 were passed which applied Section 504 nondiscrimination requirements to programs or activities conducted by executive agencies, and added language requiring the promulgation of regulations. Each executive agency and the Postal Service now has its own Section 504 regulations which are tailored to the particular recipients of that agency's programs. In addition, each executive agency and the Postal Service have regulations which delineate the coverage of Section 504 with regard to that agency's own programs. In 1980, President Carter issued Executive Order 12250 which provided that the Department of Justice shall coordinate the implementation and enforcement of certain nondiscrimination provisions, including those of Section 504.²²

Selected Supreme Court Decisions

The Supreme Court has examined Section 504 in numerous contexts and, since the enactment of the ADA in 1990, has often referenced Section 504 in its analysis of ADA cases. The first Section 504 case to reach the Supreme Court was *Southeastern Community College v. Davis*.²³ In *Southeastern*, the plaintiff was a student with a serious hearing disability and who sought to be trained as a registered nurse. The college argued that she was not "otherwise qualified" as she could not understand speech except through lip reading and that this limitation made it unsafe for her to participate in the normal clinical program. The Supreme Court agreed with the college, noting that it was unlikely that she "could benefit from any affirmative action that the regulations reasonably could be interpreted as requiring."²⁴ The Court concluded that

²¹ Low vision devices are not included in the ordinary eyeglasses and contact lens exception.

²² Executive Order 12250 (November 2, 1980), reprinted at <http://www.usdoj.gov/crt/cor/byagency/eo12250.htm>.

²³ 442 U.S. 397 (1979).

²⁴ *Id.* at 409.

there was no violation of §504 when Southeastern concluded that respondent did not qualify for admission to its program. Nothing in the language or history of §504 reflects an intention to limit the freedom of an educational institution to require reasonable physical qualifications for admission to a clinical training program. Nor has there been any showing in this case that any action short of a substantial change in Southeastern's program would render unreasonable the qualifications it imposed.²⁵

Similarly, in *Alexander v. Choate*²⁶ the Supreme Court found no violation of Section 504 where Medicaid recipients with disabilities claimed that a proposed 14-day limitation on in-patient coverage had a discriminatory effect on individuals with disabilities. The Court found that the limitation was neutral on its face as it would provide Medicaid users with or without disabilities with "identical and effective hospital services."²⁷ Section 504 did not require the state to alter its definition of the Medicaid benefit because individuals with disabilities have greater medical needs. Citing *Southeastern*, the Court observed that Section 504 requires even-handed treatment and an opportunity for individuals with disabilities to participate and benefit from programs receiving federal funds. "The Act does not, however, guarantee the handicapped equal results from the provision of state Medicaid, even assuming some measure of equality of health could be constructed."²⁸

*Consolidated Rail Corporation v. Darrone*²⁹ raised the issue of whether an employment discrimination action under Section 504 was limited to situations where the primary objective of the federal financial assistance was to provide employment. The Supreme Court held that such actions were not limited since the primary goal of the Rehabilitation Act is to increase employment of individuals with disabilities. The fact that Congress chose to ban such employment discrimination only by the federal government and recipients of federal funds did not require that Section 504 be further limited.

In *Bowen v. American Hospital Association*³⁰ the Supreme Court addressed the issue of whether Section 504 regulations requiring the provision of health care to infants with disabilities were authorized by Section 504. This case began when the parents of a child with Down Syndrome requested that life-saving surgery not be performed.³¹ In response to the death of the child, HHS promulgated a regulation under Section 504 stating that Section 504 required that nourishment and medically beneficial treatment should not be withheld from infants with disabilities.³² Striking down these regulations, the Court noted that the legislative history of the Rehabilitation Act did not support the argument that federal officials can intervene in treatment decisions traditionally left by state law to the parents and attending physicians.³³

²⁵ *Id.* at 414.

²⁶ 469 U.S. 297 (1985).

²⁷ *Id.* at 302.

²⁸ *Id.* at 304.

²⁹ 465 U.S. 624 (1984).

³⁰ 476 U.S. 610 (1986).

³¹ This situation is generally referred to as the "Baby Doe" case.

³² 45 C.F.R. §84.55(b) (1985).

³³ 476 U.S. 610, 645 (1986).

*School Board of Nassau County v. Arline*³⁴ examined the issue of when an individual with a disability is “otherwise qualified” for a job if the individual has a contagious disease. Gene Arline taught elementary school until her employment was terminated after she suffered a third relapse of tuberculosis within two years. The Supreme Court held that an individual with a contagious disease may be a person with a disability under Section 504 but that a person who poses a significant risk of communicating an infectious disease to others that cannot be alleviated by reasonable accommodation will not be otherwise qualified for a job. This should be determined by findings of fact based on reasonable medical judgments about the nature of the risk, the duration of the risk, the severity of the risk, and the probabilities the disease will be transmitted and will cause harm.³⁵

In *Traynor v. Turnage*³⁶ the Supreme Court examined the application of Section 504 to an executive agency, more specifically to the Veterans’ Administration (VA). The veterans who brought the suit had been denied an extension of the time limit for the use of educational benefits due to disability on the ground that their alleged disability was due to alcoholism unrelated to a psychiatric condition. VA regulations prohibited the granting of a time extension because alcoholism unrelated to a psychiatric condition was considered willful misconduct.³⁷ 38 U.S.C. §211(a) bars judicial review of the Veterans’ Administrators’ decision “on any question of law or fact under any law administered by the Veterans’ Administration providing benefits for veterans.” The first question the Court addressed, then, was whether 38 U.S.C. §211(a) foreclosed the Court from considering whether the VA regulation violated Section 504. Holding that such suits were not precluded, the Supreme Court noted that

Section 211(a) insulates from review decision of law and fact ‘under any law administered by the Veterans’ Administration,’ that is, decisions made in interpreting or applying a particular provision of that statute to a particular set of facts... But the cases now before us involve the issue whether the law sought to be administered is valid in light of a subsequent statute whose enforcement is not the exclusive domain of the Veterans’ Administration.³⁸

The Court then examined the second issue in *Traynor*: whether the regulation was inconsistent with the requirements of Section 504. Finding that the regulation did not violate Section 504, the Court observed, “There is nothing in the Rehabilitation Act that requires that any benefit extended to one category of handicapped persons also be extended to all other categories of handicapped persons.”³⁹ The Court also noted that “Congress is entitled to establish priorities for the allocation of the limited resources available for veterans’ benefits, ... and thereby to conclude that veterans who bear some responsibility for their disabilities have no stronger claim to an extended eligibility period than do able-bodied veterans.”

The Supreme Court in *Barnes v. Gorman*⁴⁰ held in a unanimous decision that punitive damages may not be awarded under Section 202⁴¹ of the ADA and Section 504 of the Rehabilitation Act.

³⁴ 480 U.S. 273 (1987).

³⁵ *Id.* at 288.

³⁶ 485 U.S. 535 (1988).

³⁷ 28 C.F.R. §3.301(c)(2).

³⁸ 485 U.S. 535, 543-544 (1988).

³⁹ *Id.* at 549.

⁴⁰ 536 U.S. 181 (2002).

⁴¹ 42 U.S.C. §12132. Section 203, 42 U.S.C. §12133, contains the enforcement provisions.

Jeffrey Gorman uses a wheelchair and lacks voluntary control over his lower torso which necessitates the use of a catheter attached to a urine bag. He was arrested in 1992 after fighting with a bouncer at a nightclub and during his transport to the police station suffered significant injuries due to the manner in which he was transported. He sued the Kansas City police and was awarded over \$1 million in compensatory damages and \$1.2 million in punitive damages. The eighth circuit court of appeals upheld the award of punitive damages but the Supreme Court reversed. Although the Court was unanimous in the result, there were two concurring opinions, and the concurring opinion by Justice Stevens, joined by Justices Ginsburg and Breyer, disagreed with the reasoning used in Justice Scalia's opinion for the Court.

Justice Scalia observed that the remedies for violations of both Section 202 of the ADA and Section 504 of the Rehabilitation Act are "coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964."⁴² Neither Section 504 nor Title II of the ADA specifically mention punitive damages, rather they reference the remedies of Title VI of the Civil Rights Act. Title VI is based on the congressional power under the Spending Clause⁴³ to place conditions on grants. Justice Scalia noted that Spending Clause legislation is "much in the nature of a contract" and, in order to be a legitimate use of this power, the recipient must voluntarily and knowingly accept the terms of the "contract." "If Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously."⁴⁴ This contract law analogy was also found to be applicable to determining the scope of the damages remedies and, since punitive damages are generally not found to be available for a breach of contract, Justice Scalia found that they were not available under Title VI, Section 504, or the ADA.

Section 504 and the ADA

The Americans with Disabilities Act was modeled on the statutory language, regulations, and case law of Section 504. The ADA and Section 504 are, therefore, very similar and have some overlapping coverage but also have several important distinctions. Most significantly, Section 504 is limited to programs receiving federal funds or the executive agencies and the Postal Service while the ADA broadly covers the private sector regardless of whether federal funds are involved and does not cover the executive agencies or the Postal Service.

There are several other distinctions between the ADA and Section 504. For example, the ADA contains specific exemptions for religious entities.⁴⁵ There are no corresponding provisions in Section 504. Therefore, if a faith-based organization receives federal funds, it is prohibited from discriminating against an individual with a disability.⁴⁶

Title I of the ADA prohibits employment discrimination which is also prohibited with regard to the entities covered by Section 504. However, the enforcement procedures for the two statutes are somewhat different. Enforcement of Title I of the ADA parallels that of Title VII of the Civil Rights Act of 1964 and includes the requirement that persons alleging discrimination file a charge

⁴² 42 U.S.C. §2000d *et seq.*

⁴³ U.S. Const., Art. I §8, cl.1.

⁴⁴ *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981).

⁴⁵ 42 U.S.C. §§12113(c), 12187.

⁴⁶ For a more detailed discussion of Section 504 requirements for faith-based organizations see <http://www.dol.gov/odep/pubs/fact/faith.htm>.

with the EEOC.⁴⁷ However, under Section 504 an employment discrimination complaint may be filed with the Office of Civil Rights for the agency that provided the federal financial assistance or the Department of Justice. Administrative procedures do not have to be exhausted prior to filing suit in federal court.⁴⁸

Section 504 and Education

Several federal statutes, notably the Individuals with Disabilities Education Act (IDEA),⁴⁹ Section 504, and the ADA, address the rights of individuals with disabilities to education.⁵⁰ Although there is overlap, particularly with Section 504 and the ADA, each statute plays a significant part in the education of individuals with disabilities. Generally, although there are some differences regarding K-12 schools, the Department of Education (ED) has interpreted the Section 504 compliance standards for schools to be the same as the basic requirements of IDEA.⁵¹

As discussed previously, the Rehabilitation Act is amended by the ADA Amendments Act to reference the definition of disability in the ADA. Section 504's coverage of education was a subject of discussion during the passage of the ADA Amendments Act, and the Senate Statement of Managers observed:

We expect that the Secretary of Education will promulgate new regulations related to the definition of disability to be consistent with those issued by the Attorney General under this Act. We believe that other current regulations issued by the Department of Education Office of Civil Rights under Section 504 of the Rehabilitation Act are currently harmonious with Congressional intent under both the ADA and the Rehabilitation Act.⁵²

The implications of the changes in the definition of disability under Section 504 and the ADA for the coverage of children in K-12 schools is not entirely clear. Perry Zirkel, a Lehigh University education and law professor, argues that the ADAAA would result in more students in K-12 education being given Section 504 plans, especially students with diabetes, asthma, food allergies, dyslexia, and attention deficit disorder (ADD).⁵³ Another commentator noted that the addition of "reading" in the list of major life activities may be problematic since "there is no easy way to distinguish children who are unable to read because they have a disability from those who have simply received poor instruction."⁵⁴

⁴⁷ 42 U.S.C. §12117(a), 42 U.S.C. §2000e-5.

⁴⁸ 29 U.S.C. §794a, 42 U.S.C. §2000d *et seq.*

⁴⁹ 20 U.S.C. §1400 *et seq.*

⁵⁰ For a more detailed discussion and comparison of the educational coverage of these statutes see CRS Report R40123, *Education of Individuals with Disabilities: The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA)*, by Nancy Lee Jones and Carol J. Toland.

⁵¹ These requirements include the provision of a free appropriate public education in the least restrictive setting. See 34 C.F.R. Part 104, Appx. A, Subpart D.

⁵² *Id.*

⁵³ "ADA Amendments Become Law, New Definitions Expand Protection," SECTION 504 COMPLIANCE HANDBOOK (Nov. 2008).

⁵⁴ "List of 'Major Life Activities' in ADA Bill Raises Questions About Reading," 24 THE SPECIAL EDUCATOR 3 (October 10, 2008).

Author Contact Information

Nancy Lee Jones
Legislative Attorney
njones@crs.loc.gov, 7-6976

<http://wikileaks.org/wiki/CRS-RL34041>