

CRS Report for Congress

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

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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, its regulations, and Supreme Court interpretations. Emphasis is placed on its differences from the ADA, and on its relationship to the Individuals with Disabilities Education Act (IDEA). It will be updated as necessary.

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

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.

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.

This report examines Section 504, its regulations, and Supreme Court interpretations. Emphasis is placed on its differences from the ADA and on its relationship to the Individuals with Disabilities Education Act (IDEA).⁴

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,

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.⁵

The implementation of Section 504 was not performed expeditiously. The then Department of Health, Education, and Welfare (HEW)⁶ published regulations in 1978 only after a federal court held that HEW was required to promulgate regulations⁷ and after demonstrations at HEW offices.⁸ The year 1978 also saw major amendments to Section 504.⁹ These amendments expanded Section 504 nondiscrimination requirements to programs or activities conducted by executive agencies, and added

⁴ 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.

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

⁶ HEW was divided into the current Department of Health and Human Services (HHS) and the current Department of Education (ED).

⁷ *Cherry v. Mathews*, 419 F.Supp. 922 (D.D.C. 1976).

⁸ National Council on Disability, "Rehabilitating Section 504" (February 12, 2003), at [<http://www.ncd.gov/newsroom/publications/2003/section504.htm>].

⁹ P.L. 95-602.

a new section 505¹⁰ which applied the remedies, procedures and rights of Title VI of the Civil Rights Act of 1964¹¹ to Section 504 actions.

Statutory and Regulatory Provisions

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.¹²

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 1972.¹³ The amendment clarified that discrimination is prohibited throughout the entire institution if any part of the institution receives federal financial assistance.¹⁴

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.¹⁵

Subsection (d) of Section 504 requires that the standards used to determine whether there has been a violation of Section 504 regarding employment

¹⁰ 29 U.S.C. §794a.

¹¹ 42 U.S.C. §2000d *et seq.*

¹² 29 U.S.C. §794(a).

¹³ *Grove City College v. Bell*, 465 U.S. 555 (1984). See also *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624 (1984).

¹⁴ 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).

¹⁵ *Id.*

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.”

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 504.¹⁶

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*.¹⁷ 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 lipreading 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.”¹⁸ The Court concluded that

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.¹⁹

¹⁶ Executive Order 12250 (November 2, 1980), reprinted at [<http://www.usdoj.gov/crt/cor/byagency/eo12250.htm>].

¹⁷ 442 U.S. 397 (1979).

¹⁸ *Id.* at 409.

¹⁹ *Id.* at 414.

Similarly, in *Alexander v. Choate*²⁰ 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.”²¹ 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.”²²

*Consolidated Rail Corporation v. Darrone*²³ 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*²⁴ 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.²⁵ 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.²⁶ 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.²⁷

*School Board of Nassau County v. Arline*²⁸ examined the issue of when an individual with a disability is “otherwise qualified” for a job if the individual has a

²⁰ 469 U.S. 297 (1985).

²¹ *Id.* at 302.

²² *Id.* at 304.

²³ 465 U.S. 624 (1984).

²⁴ 476 U.S. 610 (1986).

²⁵ This situation is generally referred to as the “Baby Doe” case.

²⁶ 45 C.F.R. §84.55(b) (1985).

²⁷ 476 U.S. 610, 645 (1986).

²⁸ 480 U.S. 273 (1987).

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.²⁹

In *Traynor v. Turnage*³⁰ 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.³¹ 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.³²

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."³³ 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."

²⁹ *Id.* at 288.

³⁰ 485 U.S. 535 (1988).

³¹ 28 C.F.R. §3.301(c)(2).

³² 485 U.S. 535, 543-544 (1988).

³³ *Id.* at 549.

The Supreme Court in *Barnes v. Gorman*³⁴ held in a unanimous decision that punitive damages may not be awarded under Section 202³⁵ of the ADA and Section 504 of the Rehabilitation Act. 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."³⁶ 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 Clause³⁷ 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."³⁸ 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.

³⁴ 536 U.S. 181 (2002).

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

³⁶ 42 U.S.C. §2000d *et seq.*

³⁷ U.S. Const., Art. I §8, cl.1.

³⁸ *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981).

There are several other distinctions between the ADA and Section 504. For example, the ADA contains specific exemptions for religious entities.³⁹ 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.⁴⁰

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 with the EEOC.⁴¹ 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.⁴²

Section 504 and the Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act

IDEA⁴³ provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education, FAPE. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children without disabilities.⁴⁴ IDEA contains a categorical definition of a child with a disability that states the following:

- (3) Child with a disability —
 - (A) In general
 - The term ‘child with a disability’ means a child —
 - (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual

³⁹ 42 U.S.C. §§12113(c), 12187.

⁴⁰ For a more detailed discussion of Section 504 requirements for faith-based organizations see [<http://www.dol.gov/odep/pubs/fact/faith.htm>]

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

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

⁴³ 20 U.S.C. §1400 *et seq.*, P.L. 108-446. For a more detailed discussion of the provisions 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.

⁴⁴ For a more detailed discussion of the congressional intent behind the enactment of P.L. 94-142, see CRS Report 95-669, The Individuals with Disabilities Education Act: Congressional Intent, by Nancy Lee Jones.

impairments (including blindness), serious emotional disturbance (referred to in this title as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
(ii) who, by reason thereof, needs special education and related services.⁴⁵

In addition to the FAPE requirements, IDEA also requires that states and school districts identify, locate, and evaluate all children with disabilities, regardless of the severity of their disability, to determine which children are eligible for special education and related services. Educational agencies must create, with parental involvement, and implement an individualized education program (IEP) for each child with a disability. “To the maximum extent appropriate,” children with disabilities must be educated with children who are not disabled. In addition, states and school districts must provide procedural safeguards to children with disabilities and their parents, including a right to a due process hearing, the right to appeal to federal district court, and, in some cases, the right to receive attorneys’ fees.

Section 504 and the Education of Children with Disabilities

Section 504 prohibits discrimination against individuals with disabilities by entities receiving federal funds. Since school systems generally receive federal funds, they would be covered by Section 504’s nondiscrimination mandate. Generally, the Department of Education has interpreted the Section 504 compliance standards for schools to be the same as the requirements of IDEA.⁴⁶

However, the definition of an individual with a disability under Section 504 is a functional definition which differs from the categorical definition under IDEA. The definition for “individual with a disability” applicable to Section 504 is “any person who — (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment.”⁴⁷ IDEA, as noted previously, lists certain conditions and then requires that the child also need special education and related services. Thus, some children who do not qualify under IDEA may be covered by Section 504.⁴⁸

The enforcement of IDEA and Section 504 also differs. IDEA is administered by the Office of Special Education and Rehabilitative Services (OSERS) in the Department of Education (ED). Section 504 is enforced by the Office for Civil Rights (OCR) in the Department of Education (ED). OCR receives complaints from parents, students, or advocates; provides technical assistance; and initiates reviews.

⁴⁵ 20 U.S.C. §1401(3).

⁴⁶ 34 C.F.R. Part 104, Appx. A, Subpart D.

⁴⁷ 29 U.S.C. §705(20)(B).

⁴⁸ For a more detailed discussion of students protected by Section 504 see “Frequently Asked Questions about Section 504 and the Education of Children with Disabilities,” [<http://www.ed.gov/about/offices/list/ocr/504faq.html>].

OCR has the administrative authority to enforce Section 504⁴⁹ and requires that procedural safeguards be in place that include the opportunity for an impartial hearing.⁵⁰ In addition, there is a private right of action under Section 504 so that individuals who feel their rights have been violated may file a private lawsuit against the school district at any time without exhausting administrative remedies. In contrast, IDEA has detailed procedural due process requirements that in part provide for an impartial hearing and the right of either party to appeal the hearing officer's decision to federal district court.⁵¹ Unlike Section 504, IDEA requires the exhaustion of administrative remedies prior to filing suit.⁵²

⁴⁹ “Frequently Asked Questions about Section 504 and the Education of Children with Disabilities,” [http://www.ed.gov/about/offices/list/ocr/504faq.html].

⁵⁰ 34 C.F.R. §104.36.

⁵¹ 20 U.S.C. §1415.

⁵² *Id.*