
Preface

SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT: IMPLICATIONS FOR EDUCATIONAL LEADERS

Why We Wrote This Book

Americans who are accustomed to living in a world where inequities in schooling and broader society on the basis of race, gender, and disability have largely been eliminated can easily lose sight of what life was like in the not so distant past. For example, in 1969, 15 years after the Supreme Court's monumental decision in *Brown v. Board of Education* (1954) ended state-sanctioned segregation due to race in public schools, Neil Armstrong became the first human to walk on the moon, thereby generating a technological revolution that led to such developments as the Internet, e-mail, and a host of other advancements. Yet, about one-half of American states had laws denying equal educational, and other, opportunities to individuals with disabilities. Even so, change was on the horizon as a result of two cases that were litigated in federal trial courts and that had a profound impact on the rights of individuals with disabilities.

The first case, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (*PARC*) was initiated on behalf of a class of all individuals who were mentally retarded who were excluded from public schools. Ruling in favor of the plaintiffs in *PARC*, a federal trial court held that no child who was mentally retarded or thought to be mentally retarded could be assigned to a special education program or excluded from the public schools without due process. The court added that school systems in Pennsylvania had to provide all children who were mentally retarded with a free appropriate public education and training programs appropriate to their capacities.

The second case, *Mills v. Board of Education of the District of Columbia* (*Mills*), extended the same right to other classes of students with disabilities,

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establishing the principle that a lack of funds was an insufficient basis for denying these children services. Moreover, *Mills* provided much of the due process language that was later incorporated into the Individuals With Disabilities Education Act (IDEA) and other federal legislation. The court ruled that the board had to expend its available funds equitably so that all students would receive a publicly funded education consistent with their needs and abilities. Additionally, the court directed the board to provide due process safeguards before any children were excluded from the public schools, reassigned, or had their special education services terminated, outlining elaborate due process procedures that it expected the school board to follow.

Insofar as *Mills* was litigated in the nation's capitol, it, like *PARC*, played a major role in congressional reauthorization of a much older federal statute that is actually a labor law, Section 504 of the Rehabilitation Act. Combined with the 1990 Americans With Disabilities Act (ADA), these two laws have had a major impact on students, educators, parents, and all who enter public school facilities but are not covered by the IDEA.

The impact of Section 504 and the ADA dramatically altered the access rights of individuals with disabilities who are otherwise qualified to participate in programs that receive federal financial assistance if they can do so by means of reasonable accommodations and are not subject to defenses that might limit their ability to do so. As far reaching as Section 504 and its regulations are, the latter have still not incorporated "people-first" language into their provisions since they still refer to those who are covered by their protections as "handicapped." Accordingly, while some of the terms used in this book, particularly those referring to judicial statements, may not reflect current language protocols, we have retained their original wording rather than make modifications that might distort the original remarks.

Who Should Read This Book

We are aware of the complexity of Section 504, the ADA, their regulations, and the many cases that they have generated, and this book offers educators wide-ranging information on the rights of individuals who are protected by these two laws. Even so, this book is not intended to serve as a how-to manual. Rather, it is designed to help to make educators aware of the many requirements governing the law as it impacts the rights of individuals with disabilities, in the hope that this increased understanding will put them in a better position to implement both Section 504 and the ADA. In light of the detail that the book provides, it can also serve as a current and concise desk reference for educators ranging from building-

district-level administrators to classroom teachers as well as resource specialists in special education and related fields such as counseling.

Like our other works, this book is not intended to replace the advice and counsel of a school board's attorney. Rather, the book is designed to make practitioners more aware of how the various requirements of Section 504 and the ADA impact the rights of individuals with disabilities in school settings, however broadly construed, in the hope that the educators who understand these laws will be in a better position to meet their myriad legal requirements. We thus caution readers to consult their school board attorneys when difficult situations arise.

This book is organized around the major issues in the law relating to individuals with disabilities. With this organization, the book examines the substantive and procedural requirements that Section 504 and the ADA place on educators. Insofar as there are many issues to cover in a book on special education law, it is a twin challenge selecting both the issues to be grouped in each chapter and the order of the chapters themselves. Based on this challenge, we have organized the chapters in this book around the major procedural and substantive issues affecting the rights of individuals with disabilities. All of the chapters offer recommendations for practice that educational leaders may wish to consider when dealing with Section 504 and the ADA.

Chapter 1 begins with a brief overview of the American legal system by discussing the sources of law. The second section examines the history of the movement to obtain equal educational opportunity rights for students with disabilities, highlighting key cases that shaped the development of Section 504 and eventually the ADA, since developments with regard to the needs of children ultimately impacted on the rights of adults, whether employees, parents, or visitors, in school settings.

The second chapter introduces readers to the specific provisions of Section 504 and the ADA that apply to students, parents, employees, and others who seek the benefits of the programs and services offered by educational institutions. As such, this chapter lays the groundwork for the remainder of the book. After reviewing these materials, the chapter rounds out with a summary and recommendations for educational officials.

Chapter 3, which focuses on legal issues involving students, is divided into three major sections. The first discusses the requirements of Section 504 and the ADA as they apply to students who attend public elementary and secondary schools. The second section presents information on the applicability of the two statutes to nonpublic schools. The third section outlines the laws' requirements with respect to institutions of higher education. Each of these sections analyzes case law to provide guidance as to who qualifies as an individual with a disability, whether individuals are

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otherwise qualified, and what constitutes reasonable accommodations. The chapter ends with a summary and recommendations for educational officials.

The fourth chapter, which examines issues involving employees, is divided into three substantive sections. These sections address discrimination claims, what it means to be otherwise qualified, and reasonable accommodations. The chapter rounds out with a brief conclusion before offering recommendations for practice. Moreover, in reviewing representative litigation from among the many cases filed pursuant to Section 504 and the ADA, it is important to note that since many of the suits can fit under more than one category because they involve related issues, some of the cases can be found under more than one heading. Insofar as this chapter is concerned with the rights of educational employees with disabilities, it also cites litigation that arose in noneducational contexts, since the implications of these cases apply in educational settings.

Chapter 5 focuses on issues involving parents and the general public. Insofar as educational officials must provide public access to school buildings, property, and programs, this chapter highlights the provisions in Section 504 and the ADA that apply to these two broad constituencies.

The sixth, and final, chapter reviews a variety of topics associated with the options that courts have in evaluating whether discrimination claims against public educational institutions have merit. Among the issues that this chapter addresses are the defenses that educational institutions may rely on, the sovereign immunity of states and state agencies, and damages awards. The chapter also considers whether officials may be sued in their individual capacities, statutes of limitations for filing litigation, and attorney fees awards for successful plaintiffs. Finally, due to the interrelationship of Section 504 and the ADA to the IDEA for students in elementary and secondary schools, the chapter focuses on the requirement that aggrieved parties first pursue remedies under the IDEA before filing suits under Section 504 or the ADA.

The book includes two appendices, one of useful Web sites in education law, the other of Web sites of state departments of education and special education services.