



# Section 504: A Brief History

A refresher for educators and administrators  
working with 504-eligible students

Based on the John B. Comegno Core Concepts of Section 504 Webinar Series for Frontline Education.

# Core Concepts of Section 504 Series



Defining the difference between a Section 504 Plan and an Individual Education Plan (IEP) is a challenge for many educators. Which plan addresses a disability, and how do they differ? These questions have confused educators across the country for over 40 years.

Understanding how disability laws in the United States, like the Rehabilitation Act of 1973, evolve helps us understand what Section 504 is and, perhaps more importantly, what it's not.

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***We can sum up 504's intent in four words:  
Thou shalt not discriminate.***

— John B. Comegno II, nationally-recognized lecturer on School Law.





# 1. Reviewing the Origins of Section 504 of the Rehabilitation Act of 1973



### Reviewing the Origins of Section 504 of the Rehabilitation Act of 1973

The story of Section 504 begins in 1954, in Topeka, Kansas, with the groundbreaking and pivotal lawsuit *Brown versus Board of Education*. Prior to 1954, discrimination based on a variety of distinguishing characteristics and demographic identifiers was legal, and permissible.

In *Brown v. Board of Education*, the U.S. Supreme Court determined that it was unconstitutional for school districts to provide differing qualities of education based on race or skin color. So-called “separate but equal” classrooms and schools were determined to be not equal at all, and deemed unconstitutional.

*Brown* didn't focus on disability. The issue wasn't dyslexia, autism, cognitive impairment, emotional disturbance, or social maladjustment — terms that are commonly heard in special education today. *Brown v. Board of Education* didn't address ADHD, diabetes, concussion, or any type of medical issues or, the educationally diagnosed difficulties that are seen in 504 today. But what's important to understand is that the Supreme Court in *Brown v. Board of Education* determined that students must be treated equally. Differing treatment was not permissible, not on any basis: all students in the U.S. were entitled to an equal and fair public education.

*Brown v. Board of Education* addressed the issue of “separate but not equal,” and while it was pivotal, essential, and a landmark decision, discrimination on many bases continued through the 1960s and 1970s. Statistics in the early 1970s indicated that over a million students with disabilities were not educated at all, and many were institutionalized, isolated, put in state homes and other government funded facilities.



## A Shift in the Tides for Disabled Persons in the U.S.

The tides did eventually begin to shift, and there was an evolution in civil rights awareness through the 1960s, with the movement finally giving voice, acknowledgment, and legal standing, to disabled persons. However, it took time. Disabled individuals remained unprotected by law, despite efforts in the Civil Rights Actions of the 1960s. In 1964, Senator Hubert Humphrey – who had a grandchild diagnosed with Down Syndrome – made an effort to include the disabled population in the Civil Rights Act in 1964. Unfortunately, his efforts failed. As a result, the lack of protections persisted, as did the isolation and marginalization of the disabled. An entire class of Americans remained unprotected, largely unrecognized and unsupported.

In 1975, the first legislation to address disabled persons with regard to the provision of service or employment in public entities was finally enacted. The Rehabilitation Act of 1973 (it took two years to be fully enacted), requires affirmative action by the federal government and its contractors, and explicitly prohibits discrimination on the basis of disability. “Public entities” include schools, as well as other agencies.

While the Rehabilitation Act of 1973 is an unfamiliar title to many people, it continues to serve as critical legislation in public schools as well as for hundreds of federal agencies and their contractors. **The legislation is more commonly known as Section 504...**



*All students in the U.S. were entitled to an equal and fair public education.*





## 2. The Goal of Section 504



## The Goal of Section 504

The term Rehabilitation Act of 1973 tends to produce more blank stares than knowing looks, and this reaction underscores the typical lack of national awareness regarding Section 504 of the Act. In fact, many states focus their regulations exclusively on IDEA, neglecting Section 504.

### The passage of the Rehabilitation Act was

- Not focused on students who have physical or mental impairments that would impact their major life activities.
- Not focused on the students with the attentional or mental health difficulties that would prevent their engaging in appropriate peer relationships.
- Not intended for the student who may have dyslexia, or difficulty in processing.

### Today, we recognize these students as likely candidates who are eligible for 504 accommodations.

An interesting historical fact is that initially, the goal and focus of the Rehabilitation Act was to support disabled veterans coming home from the Vietnam conflict and prohibit discrimination against them in the workplace or elsewhere. However, it still took seven years to have enabling regulation, and additional years passed before public schools saw an application of 504. These delays, and its initial non-school-based genesis, may explain the lack of understanding and awareness of what 504 is today.

The goal and intention of 504 was not to change the employment experience (of veterans or anyone else), it was to prohibit discrimination in hiring and in the workplace.

Similarly, in the purview of education, the goal and purpose of 504 is not to change the educational experience for eligible students, the intent is to ensure that the public education for 504-eligible students is the same as for all other students. It is required under law that the experience of 504-eligible students be equivalent to what their non-disabled peers are entitled to and receiving. The distinction here is that **504 students are not classified as special education students, they are general education students.**



## The Goal of Section 504

We can sum up 504's intent in four words: **Thou shalt not discriminate;** i.e. thou shalt not treat differently nor provide so-called separate but equal. 504's goal is to provide all public-school students with a fair and equitable education, and prevent disparate treatment of students with an identified disability.

Included in Section 504 is this important sentence: **No otherwise qualified individual with a disability shall, by reason of the disability, be excluded.** One group of students may not receive benefits when another group (or individual) is unable to access those benefits because of his, her, or their disability.



*Stay tuned to the Core Concepts of Section 504 Series for more guidance on the concept of "Otherwise Qualified."*







# 3. Accommodation Planning Without Much Federal or State Guidance



## Accommodation Planning Without Much Federal or State Guidance

Accommodations must be made, or carefully considered, on an individual basis, or the school is subject to claims of discrimination.

Field trips are an excellent example. Students on 504 plans cannot be unilaterally excluded from field trips because of safety, transportation, or other concerns, nor can family members of disabled students be required to attend field trips as a chaperone if those of non-disabled

are not. Examples of cases include: (Quaker Valley (PA) Sch. Dist., 39 IDELR 235 (OCR 1986), *In Rim of the World (CA) Unified Sch. Dist.*, 38 IDELR 101 (OCR 2002), *North Hunterdon (MD) Pub. Sch. Sys.*, 25 IDELR 165 (OCR 1996).

The *text, or legislation*, of 504 doesn't address how to write 504 plans nor how to design a committee. There is no language specific to the breadth of accommodations that are appropriate.

The reason that there is no explanation on how to apply Section 504 is because it is not intended as a road map, an equation, or a recipe. It is designed purely as an overview to prevent discrimination and ensure that the school-based experiences of students are the same as those of the general population.





# 4. Section 504 and the Americans with Disabilities Act



## Section 504 and the Americans with Disabilities Act

Brown v. Board of Education was a watershed moment for disability rights, followed by increasing awareness of the rights of disabled persons through the 1960s. However, the Rehabilitation Act in 1973, and Section 504, applied to public entities only: to public employers, public schools, universities, and governmental agencies. During the 1980s, the fact that private employers and other private entities were exempt from legally addressing the needs of disabled persons became clear, and the importance of changing the imbalance in those laws gained momentum. The fact that the private sector was not specifically bound by law to recognize disabled persons needed to be addressed.

A series of court decisions brought the issue of public/private sectors and the rights of disabled persons to the forefront, and the U.S. Congress

passed the Americans With Disabilities Act (ADA) in 1990. The ADA and Section 504 provide nearly identical protections. Whether individuals are students, or employees in the private sector, they are covered by the ADA and follow the same eligibility criteria. In addition, the enforcement mechanisms are duplicated in the ADA and 504.

The law of the ADA prohibits discrimination on the basis of disability. Disabled persons may not be excluded, may not be subject to disparate treatment, may not be denied the benefits of programs. Identical language is used in the Rehabilitation Act.

While the ADA is generally not discussed in relation to public schools – because it relates primarily to the private sector – it is worth noting that Title II of the ADA does directly apply to public schools around the issue

of access. Access under Title II is a responsibility within our public schools that ranges from considerations for service animals, as well as provisions for students with allergies (which are recognized typically in Section 504 plans).

A simple, straight forward take-away regarding compliance is: Compliance with 504 constitutes compliance with the ADA and Title II.

**And at its most basic:  
Accommodate, do not  
discriminate.**





## 5. Summing Up 504's Critical Message



## Summing Up 504's Critical Message

A critical message delivered via Section 504 is that discrimination is not permissible on the basis of an identified disability. While the law does not actually require a specific plan, it does require attentiveness to the needs and necessary accommodations of a disabled person, and that those accommodations be provided to suit the individual need of that person. Accommodations, modifications and other services are put in place to remove any barriers to learning.

Section 504 is Civil Rights legislation. **Standing alone, it does not expand the rights of students**, instead, it protects their rights. It is essential for educators to accommodate, not change, their students' experience. Access, and the prevention of exclusion, are the goals.



Does your team have questions about 504 eligibility criteria?

Stay tuned for the next webinar in the Core Concepts of Section 504 Series to get your eligibility criteria questions answered.



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