SECTION 504 · REHABILITATION ACT · DISABILITY DISCRIMINATION · ADHD · ENGAGEMENT DESIGN · DARK PATTERNS · MEANINGFUL ACCESS · FEDERAL FINANCIAL ASSISTANCE

Optimizing Against the Disability

Section 504 and the Deliberate Capture of Attention as Disability Discrimination

Microsoft reframed its consumer strategy around the capture of attention, naming as its models the firms courts and the FTC have already sanctioned for harming children. Microsoft is a recipient of federal financial assistance. The faculty it named is the axis of a recognized disability.

Travis Gilly · Real Safety AI Foundation

SPRING 2026

A corporation said the quiet part out loud.

Microsoft's Xbox leadership described its competition not as another console maker but as attention itself, naming as models the engagement-driven platforms that courts and the FTC have already sanctioned for engagement design that harmed minors.

The statement was made as a matter of business pride. It is also a legal admission of a kind its maker did not intend.

WHY IT IS AN ADMISSION

Microsoft is a recipient of federal financial assistance. A recipient is forbidden by Section 504 to discriminate against people with disabilities in any of its operations.

The faculty it announced it would capture, attention, is, by the settled definition of the statute it operates under, the axis of a recognized disability.

PART I

The Recipient and the Disability

Who the statute binds, and the capacity it protects

29 U.S.C. § 794(A), (B), (B)(3)(A)(I) · CIVIL RIGHTS RESTORATION ACT OF 1987, PUB. L. NO. 100-259 · CONSOLIDATED RAIL CORP. V. DARRONE, 465 U.S. 624 (1984) · GROVE CITY COLLEGE V. BELL, 465 U.S. 555 (1984)

The threshold question: is the defendant a recipient at all?

The settled distinction: federal financial assistance (triggers civil rights conditions) versus federal procurement (government buys goods for its own use). A firm that sells cloud capacity on a procurement contract is not a Section 504 recipient. The dollar must be assistance.

DOD PRIME AWARD

Topological quantum computing research. A direct prime award from the Department of Defense, assistance, not procurement.

USDA AWARD

AI-based biothreat detection. A direct award, assistance, not procurement.

The Restoration Act: once a direct prime award attaches, the covered program is not the quantum laboratory. It is the corporation. 29 U.S.C. § 794(b)(3)(A)(i).

SOURCES 29 U.S.C. § 794(a), (b), (b)(3)(A)(i) · Civil Rights Restoration Act of 1987, Pub. L. No. 100-259 · Consolidated Rail Corp. v. Darrone, 465 U.S. 624 (1984) · Grove City College v. Bell, 465 U.S. 555 (1984)

42 U.S.C. § 12102(2)(A), (2)(B) · 34 C.F.R. § 104.3(H)

ADHD's defining functional limitation is the impaired regulation of attention.

The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities. Concentrating and thinking are listed major life activities. The operation of neurological and brain function is a listed major bodily function.

When the entity doing the organizing is a recipient of federal financial assistance, the attention disabled are a recognized protected class and attention is the precise axis of their disability.

THE DESIGN CLAIM

An industry organized around the capture of attention is organized around the precise capacity that this disability leaves least defended.

The general user retains a regulatory capacity the protected class lacks. The burden is heaviest exactly where the capacity is lowest, which is the population the disability defines.

SOURCES 42 U.S.C. § 12102(2)(A), (2)(B) · 34 C.F.R. § 104.3(h)

THE AXIS, RESTATED AS A BURDEN

A design that targets attention does not impose an equal burden. It bears down hardest exactly where the disability already left the least defense.

THE GENERAL USER

Retains the capacity to regulate attention. The capture design meets resistance. Safe, self-directed use remains available.

THE PROTECTED CLASS

The capacity the design is built to defeat is the capacity the disability already compromises. The resistance the general user supplies is, by definition, the resistance this class cannot.

PART II

The Design and the Admission

What the recipient said, and what the record already proves

SECTION IV.A · THE REFRAME

The competition is not another console. The competition is attention itself.

Microsoft's Xbox leadership reframed the company's consumer strategy around the capture of user attention, and named as its models two firms that courts and the Federal Trade Commission had already sanctioned for engagement design that harmed minors. The objective was stated as ambition. It also identifies the design and the standard by which others have already been judged.

WHY THE ADMISSION CARRIES WEIGHT

A recipient need not be shown to harbor animus. It announced the objective and chose, as its templates, designs a court has already found were built to addict the young.

IN RE SOCIAL MEDIA ADOLESCENT ADDICTION LITIGATION · LOS ANGELES AND NEW MEXICO VERDICTS, EARLY 2026

The theory does not have to prove the harm from scratch. Two juries already did.

LOS ANGELES

A jury found Meta Platforms and Google's YouTube liable for designing their platforms to addict a young user. The punitive component required a finding of malice, oppression, or fraud.

NEW MEXICO

A separate action returned a large consumer protection verdict against Meta arising from the same family of conduct.

THE EVIDENTIARY CORE

Internal corporate research showing the companies knew their engagement-maximizing features hooked young users. Harm and knowledge, both established.

SOURCES In re Social Media Adolescent Addiction Litigation · Los Angeles and New Mexico verdicts, early 2026

PART III

The Discrimination

Two theories, presented in ascending order of durability

III

ALEXANDER V. CHOATE, 469 U.S. 287 (1985) · ALEXANDER V. SANDOVAL, 532 U.S. 275 (2001)

THEORY 1, MEANINGFUL ACCESS

Denial of meaningful access under Alexander v. Choate

A design built to defeat the regulation of attention turns on precisely the trait that defines the protected class. It falls on the actionable side of the line Choate drew: the face of the design is not neutral as to the disability's defining feature.

THEORY 2, INTENTIONAL DISCRIMINATION

Intentional discrimination evidenced by an admission of design objective

Sandoval bars private enforcement of disparate-impact regulations. The intentional theory survives: the admission of objective plus knowledge of the disproportionate effect on the attention disabled constitutes intentional discrimination. Private Section 504 right preserved.

SOURCES Alexander v. Choate, 469 U.S. 287 (1985) · Alexander v. Sandoval, 532 U.S. 275 (2001)

ALEXANDER V. CHOATE, 469 U.S. 287 (1985) · MARK H. V. LEMAHIEU, 513 F.3D 922 (9TH CIR. 2008)

The benefit is safe, self-directed use. By design, it is accessible to the general user and not to the protected class.

Choate held that Section 504 reaches at least some conduct imposing an unjustified disparate burden, and asked whether the recipient denied the protected class meaningful access to the benefit it offers. A product engineered to defeat the regulation of attention offers safe use on terms the attention disabled cannot meaningfully accept, because the product is built to defeat the very regulation their disability already compromises.

THE APPELLATE CONFIRMATION

Following Choate, the Ninth Circuit has held that a facially neutral benefit can support a meaningful-access claim. The design need not name the disability to deny access to it.

SOURCES Alexander v. Choate, 469 U.S. 287 (1985) · Mark H. v. Lemahieu, 513 F.3d 922 (9th Cir. 2008)

Admission of objective, coupled with knowledge of disparate effect, is intentional discrimination.

THE OBJECTIVE

Stated by the recipient itself: a strategy organized around the capture of attention, modeled on designs already found to addict.

THE KNOWLEDGE

Supplied by the litigation record: the design disproportionately defeats the regulation of attention, the precise capacity the protected class lacks. Because the theory rests on intent, not on a disparate-impact regulation, it survives Sandoval.

BARNES V. GORMAN, 536 U.S. 181 (2002) · CUMMINGS V. PREMIER REHAB KELLER, P.L.L.C., 596 U.S. 212 (2022) · MARK H. V. LEMAHIEU, 513 F.3D 922 (9TH CIR. 2008) · SHEELY V. MRI RADIOLOGY NETWORK, P.A., 505 F.3D 1173 (11TH CIR. 2007)

Sandoval and private enforcement

Sandoval bars private enforcement of disparate-impact regulations, not intentional discrimination claims. The intentional theory survives intact. Administrative enforcement also unaffected.

The limits of Choate

Choate protects recipients who define their benefit package neutrally. A design built to defeat the regulation of attention is not neutral on its face as to the disability's defining feature. It falls on the actionable side of the line Choate drew.

Everyone is affected

Disparate impact doctrine exists for facially neutral, universal practices that are unequal in effect. The equal application premise is also false on the merits: a design built to defeat attention regulation does not impose equal burden on people with impaired attention regulation. Meaningful access standard (Mark H.) does not require unique severity.

The remedial ceiling

Barnes v. Gorman / Cummings: no punitive or emotional distress damages. The ceiling shapes the damages remedy; it does not close the courthouse or the agency. Injunctive and compensatory relief remain. Voluntary cessation does not moot prospective relief (Sheely).

SOURCES Barnes v. Gorman, 536 U.S. 181 (2002) · Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. 212 (2022) · Mark H. v. Lemahieu, 513 F.3d 922 (9th Cir. 2008) · Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173 (11th Cir. 2007)

ALEXANDER V. SANDOVAL, 532 U.S. 275 (2001) · THE CENTRAL OBSTACLE

Sandoval closes one door. It does not close the one this case walks through.

Sandoval bars a private plaintiff from enforcing disparate-impact regulations. It says nothing about intentional discrimination, which has always been privately enforceable, and it leaves administrative enforcement of the disparate-impact rules fully intact.

> *The article presents the two theories in ascending order of durability for this reason. The intentional theory is the one built to survive the obstacle the disparate-impact theory cannot.*

SOURCES Alexander v. Sandoval, 532 U.S. 275 (2001) · The central obstacle

BARNES V. GORMAN, 536 U.S. 181 (2002) · CUMMINGS V. PREMIER REHAB KELLER, P.L.L.C., 596 U.S. 212 (2022) · SHEELY V. MRI RADIOLOGY NETWORK, P.A., 505 F.3D 1173 (11TH CIR. 2007)

A ceiling on damages is not a closed courthouse.

The ceiling (Barnes, Cummings)

No punitive damages; no damages for emotional distress. Section 504 sounds in the Spending Clause, and the contract analogy limits the recovery available.

What remains

Injunctive relief, compensatory relief, and administrative enforcement. Under Sheely, voluntary cessation does not moot the claim for prospective relief.

SOURCES Barnes v. Gorman, 536 U.S. 181 (2002) · Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. 212 (2022) · Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173 (11th Cir. 2007)

CONCLUSION

The recipient that declares it wants the attention has named the very thing the statute forbids it to optimize against.

This article is a framework and a notice. The framework is that attention capture design, deployed by a federal funding recipient, is not merely a consumer protection problem but a disability discrimination problem.

The admission is not the violation. It is the notice. What remains is the ordinary work of a particular case: a plaintiff, a product, a record. The doctrine is already there to receive it.

CASES

Alexander v. Choate, 469 U.S. 287 (1985)

Alexander v. Sandoval, 532 U.S. 275 (2001)

Barnes v. Gorman, 536 U.S. 181 (2002)

Consolidated Rail Corp. v. Darrone, 465 U.S. 624 (1984)

Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. 212 (2022)

Doe v. [reporting name], 982 F.3d 1204 (9th Cir. 2020)

Grove City College v. Bell, 465 U.S. 555 (1984)

Mark H. v. Lemahieu, 513 F.3d 922 (9th Cir. 2008)

Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173 (11th Cir. 2007)

STATUTES AND REGULATIONS

29 U.S.C. § 794(a) (Section 504)

29 U.S.C. § 794(b)

29 U.S.C. § 794(b)(3)(A)(i)

29 U.S.C. § 794(d)

42 U.S.C. § 12102(2)(A)

42 U.S.C. § 12102(2)(B)

34 C.F.R. § 104.3(h)

Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988)