

SECTION

504
**AMERICANS WITH
DISABILITIES ACT**

COORDINATOR'S HANDBOOK

**A TECHNICAL
ASSISTANCE RESOURCE
FOR
CALIFORNIA COMMUNITY COLLEGES**

1999 EDITION

SECTION 504 AND ADA COORDINATOR'S HANDBOOK

**A TECHNICAL ASSISTANCE RESOURCE FOR
CALIFORNIA COMMUNITY COLLEGES**

BY

THORPE, HENDRIX AND ASSOCIATES

1999

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This is a revised version of the Section 504 and ADA Coordinator's Handbook, 1991, originally written by Mary Thorpe and her colleagues at Thorpe, Hendrix and Associates, and includes the requirements of both the Americans with Disability Act (ADA) and Section 504 of the Rehabilitation Act. This handbook is available in a variety of formats. You may contact the office of Thorpe, Hendrix and Associates at (209) 245-4075 to request a copy.

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PREFACE

This handbook incorporates the requirements of Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA), with a particular focus on student access in the California Community Colleges. The ADA may be viewed as “the child” of Section 504 – an offspring which is more powerful and wider ranging in the anti-discrimination protection it provides to individuals with disabilities.

The Rehabilitation Act of 1973 was an early effort by the federal government to provide protections against discrimination for individuals with disabilities. Specifically, it stated that “*no otherwise qualified handicapped individual in the United States ... shall, solely by reason of ... handicap, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance.*” Section 504 of the Act applies specifically to educational entities, but only to those educational “programs or activities that received federal financial assistance.” In a series of cases since 1973, the federal courts have clarified, refined and further interpreted Section 504’s application.

In 1990 the ADA became law, extending universal civil rights protections to individuals with disabilities for the first time. The ADA was modeled on the Section 504 and ADA regulations and the federal case law that interpreted them. The ADA maintained most of the language and concepts found in Section 504, but extended the protection for individuals with disabilities beyond federally funded institutions. The ADA does not displace any of the rights or remedies provided under Section 504, or under any other federal and state law that provides equal or greater protection against disability-based discrimination. It institutes a wide range of antidiscrimination protections for individuals with disabilities in both the public and private sector, as well as all state and local governments, regardless of federal funding.

The ADA uses the same definition of an individual with disabilities as Section 504, and specifies three protected categories: (1) Individuals who have a physical or mental impairment that substantially limits one or more major life activities; (2) Individuals who have a record of a physical or mental impairment that substantially limits one or more major life activities; and (3) Individuals who are regarded as having such an impairment.

While Section 504 and the ADA are very much alike, they are not identical. The ADA establishes higher accessibility standards in renovation and new construction. Community colleges, which receive federal funds, continue to be covered by Section 504, and must also comply with the requirements of the ADA.

Each college in the California Community College system is unique and constantly changing. New and emerging technology pose both opportunities and challenges in providing equal access for individuals with disabilities. Further, regulatory agencies and the courts continue to interpret these regulations. While full compliance may seem like an elusive goal, it is nevertheless a worthy one – as well as a legal and professional obligation. This handbook is not intended to cover every single detail of the Section 504 or ADA regulations, or to include a summary of every related court case. It is, however, intended to address the issues that most frequently

surface on community college campuses, as evidenced by violations cited during on-site civil rights reviews and complaint investigations. This handbook is for Section 504/ADA Coordinators and can provide a starting point for weaving the requirements of Section 504 and the ADA into the fabric of the civil rights protections afforded everyone in California's Community College system.

ESSENTIAL TERMS

It is important for each Section 504 and ADA Coordinator, as well as other district/ college personnel, to understand the essential terms of Section 504 and the ADA. The following terms are critical to your understanding of this handbook.

- The ADA uses the same definition for **disability** as is used for “handicap” by Section 504 of the Rehabilitation Act of 1973. The ADA, however, goes on to clarify the meaning of the term by providing a “three pronged” explanation of a person with a disability as one who: (1) has a physical or mental impairment that substantially limits one or more of the major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

(1) The major elements of the definition of **a physical or mental impairment that substantially limits one or more of the major life activities** are:

A physical or mental impairment is understood to be:

- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or
- (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Substantially limits means being unable to perform, or being significantly restricted with regard to the conditions, manner or duration under which an individual can perform, a major life activity when compared to the average person.

Major life activities are defined as functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, breathing, learning and working.

(2) **An individual with a record of such an impairment** is defined as a person with a history of a mental or physical Impairment that substantially limits one or more major life activities.

(3) **A person regarded as having an impairment** is defined as an individual having a physical or mental impairment that does not substantially limit major life activities, but which is treated as a limitation, or an impairment which substantially limits major life activities only as a result of the attitudes of others toward such an impairment.

- **A qualified student (or applicant) with a disability** is defined as an individual with a disability who meets the essential eligibility requirements to receive services, or to

participate by the college, with or without one or more academic in programs or activities provided by the college, with or without one or more academic accommodations.

- **Academic accommodation** means, in general, any change in the learning environment or the way things are customarily done that enables a student with a disability to enjoy equal collegiate opportunities. These accommodations may be one or more of the following: (1) reasonable modifications to rules, policies or practices, (2) the removal of architectural, communication or transportation barriers, and (3) the provision of auxiliary aids and services. However, accommodations which are fundamental alterations of the academic standards are not required.
- **A qualified employee (or applicant) with a disability** means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with reasonable accommodation, perform the essential functions of the position.
- **Reasonable accommodation** means, in general, any change in the work environment or the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. These accommodations fall into three categories: (1) those to ensure equal opportunity in the application process, (2) those to enable an employee with disabilities to perform the essential functions of the position, and (3) those that enable an employee with disabilities to receive equal benefits and privileges of employment as received by other employees.
- **Essential functions** are those functions that the person who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation. The term does not include marginal functions of the position.

INTRODUCTION

PROVIDING QUALITY EDUCATION FOR INDIVIDUALS WITH DISABILITIES

Section 504 and ADA Coordinators, this handbook is for you:

- If you are your district's/college's first and only coordinator and have a file cabinet full of resources.
- If you have inherited the job-along with your predecessor's file cabinet full of Section 504 and ADA materials of unknown origin and uncertain value.
- Especially if you were appointed to the job and discover the Section 504 and ADA files are no where to be found **and** your predecessor has disappeared.
- If you have just discovered that you are the Section 504 and ADA Coordinator and your college is due to have a civil rights review next week.
- If you are the most able and knowledgeable advocate for the individuals with a disability and understand the issues, but your knowledge of the Section 504 and ADA regulations is less than comprehensive.

Many school districts and colleges made their best efforts to comply with the Section 504 and ADA regulations in the mid-'70s and early '90s respectively. Others, however, put compliance on the back burner and instituted change only in response to complaints or outside pressure. Whatever the unique history of your institution, now is the time to reassess whether your district/college is in compliance with Section 504 and the ADA. While the focus of this handbook is on federal regulations, it is worth noting that in 1992, California enacted AB 1077 to bring California law in line with the ADA standards.

Educational equity for individuals with disabilities is an integral part of any valid education approach and can only be achieved by complying with both the "letter" and the "spirit" of the law. This handbook emphasizes those aspects of the ADA which are of particular importance to community colleges in the context of their established responsibilities under Section 504. It is designed to help you ensure that there is no discrimination against individuals with disabilities and to foster the "spirit" of Section 504 and the ADA on your campus. Each section of the handbook is divided into two main segments. The first segment covers the "letter of the law," or the minimal requirements to comply with the Section 504 and the ADA regulations. The second segment suggests actions that meet the "spirit" of Section 504 and the ADA regulations. Each section also has a "Notes" segment for relevant legal references, legislative and regulatory information and other pertinent details.

It is clear that both state and federal law prohibit discrimination against individuals with disabilities. In the Community Colleges of California, it is equally clear that, to a large extent, the responsibility for preventing this discrimination falls upon you, the Section 504 and ADA Coordinator. **This handbook is for you.**

SECTION 1

COORDINATOR COMPETENCIES

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compliance check 333 are you “legal”?

The Section 504 and ADA Coordinator is:

- Aware that the three pronged definition of an individual with a disability is an individual who has: (1) a physical or mental impairment that substantially limits one or more of the individual’s major life activities, (2) a record of such an impairment, or (3) is regarded as having such an impairment. (See the Essential Terms on page 1 and Selected Case Law in the “NOTES” segment at the end of the section.)
- Familiar with the application of the term “otherwise qualified individual with disabilities” as it relates to students, employees and the general public. (See the Essential Terms on page 1 and Selected Case Law in the “NOTES” segment at the end of the section.)
- Well informed about the requirements of Section 504 and the ADA, as well as able to carry out their provisions.
- Able to verify that the district/college has a Board-approved policy covering nondiscrimination on the basis of disability and has related complaint procedures for students, employees and the public.
- Familiar with all the steps in the complaint procedures that cover alleged discrimination on the basis of disability.
- Prepared to provide copies of the complaint procedures and form upon request.
- Able to carry out the provisions of the complaint procedure and impartially investigate any complaint.
- Able to show that the district/college has conducted a Section 504 and the ADA Self Evaluations.
- Knowledgeable about the conclusions of the district/college’s ADA Self Evaluation.
- Familiar with the district’s ADA Transition Plan and able to verify that the district/college achieved program accessibility according to the ADA standards. (See **Section 5, Accessibility.**)
- Able to provide a description of any modifications to facilities, revisions of policies/practices and any other steps taken to overcome the effects of any discrimination, as dictated by the findings of the district’s ADA Self Evaluation.

- Maintaining a file of the district/college’s Section 504 and the ADA documents and activities.
- Informed about the district/college’s obligation for program accessibility. (Also see Matriculation Regulations in the “NOTES” segment at the end of this section.)
- Knowledgeable about the district/college’s obligation to provide reasonable accommodations for employees with disabilities.
- Familiar with the procedure used to provide academic modification for students with disabilities.
- Able to identify the district/college’s procedures for providing prompt, appropriate auxiliary aids and services to ensure effective communication with individuals with disabilities.
- Able to show that “direct access” emergency telephone services are provided to individuals who rely on TDD or computer modem communication.
- Prepared for a comprehensive review of Section 504 and the ADA by the Office for Civil Rights or a vocational specific review by either the Office for Civil Rights or the California Community Colleges Chancellor’s Office. (Also see Compliance Reviews under the “NOTES” segment at the end of this section.)
- Knowledgeable about the provisions that apply to services for individuals with disabilities in the Carl D. Perkins Vocational Technical Education Act of 1998 and in the Vocational Education Guidelines for the Elimination of Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap, hereafter referred to as Vocational Education Guidelines. (Also see Resources and Selected Case Law under the “NOTES” segment at the end of this section.)
- Aware that students with disabilities are protected by the provisions of Section 504 and the ADA, even if they do not qualify for or do not choose to participate in the state supported DSP&S Program.



action that exemplifies the spirit of Section 504 and the ADA...

A Coordinator who exemplifies the spirit of Section 504 and the ADA:

- Provides leadership in instituting equitable policies and practices for students and employees who have disabilities throughout the district/college. Serves as an advocate for both students and employees with disabilities.

- Is knowledgeable about the provisions of the Community College Matriculation Regulations for students with disabilities, e.g., modification in matriculation procedures, use of alternative test instruments, as well as methods and procedures to accommodate special needs.
- Is well informed about the district/college's Matriculation Services provided through the DSP&S. (See **Matriculation Regulations** in the "NOTES" segment at the end of this section.)
- Works cooperatively with other members of the staff who have responsibility for facilitating access and providing services for students with disabilities (e.g., administrators of DSP&S, facilities, extra curricular activities, counseling, academic affairs, etc.).
- Is proactive, rather than merely reactive, in routinely evaluating the progress and status of the Section 504 and ADA compliance.
- Understands that accessibility involves social, as well as physical and programmatic access.
- Initiates staff in-service training for certificated and classified employees who serve students and meet the public, in order to educate them about the need to provide both physical and social access for people with disabilities.
- Keeps abreast of Office for Civil Rights findings, case law, and other access issues including those related to distance education and other emerging technologies
- Is aware of and uses the California Community Colleges (CCC) Chancellor's Office technical assistance materials and services.
- Is knowledgeable about the CCC's commitment to diversity and actively supports diversity efforts on the college campus, particularly those that apply to individuals with disabilities.
- Understands the CCC Chancellor's Office facilities capital outlay process in order to qualify for any needed architectural barrier removal funds.

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NOTES-Coordinator Competencies

Regulatory Note

The nature of the ADA protection against discrimination for individuals with a disability is at least equal to those provided by Section 504. The ADA requires that programs, activities and services must be readily accessible and usable by individuals with disabilities.

Regulatory References

- Section 504, §§ 104.6-104.8
- ADA, Title II, §§ 35.105-107, 35.160-162
- Government Code, Title 5, §§ 55521-55522
- Vocational Education Guidelines (IV - 0) - Public Notification

Compliance Reviews

In the event that the district/college is selected for a Civil Rights Review, you as the Section 504 and ADA Coordinator will be interviewed about compliance issues and asked to provide the documents detailed in Section 2 of this handbook.

Resources

- Copies of the Section 504 and ADA Regulations and Vocational Education Guidelines should be in each Coordinator's resources file. They can be obtained from the Civil Rights Specialist, California Community Colleges Chancellor's Office, or the U.S. Department of Education for Civil Rights, *Region IX, 50 United Nations Plaza, Room 239, San Francisco, CA 94102*.
- California Community Colleges Chancellor's Office resources, to include Distance Education Guidelines, training programs, and technology funds for adaptive equipment.

Matriculation Regulations

- § 55522 - Special Accommodations requires, in part, that "matriculation services for ... students with disabilities shall be appropriate to their needs, and community college districts shall ... make modifications in the matriculation process or use alternative instruments, methods or procedures to accommodate the needs of such students."
- The regulations make participation in the DSP&S voluntary. No student may be denied necessary accommodations in the assessment process because he or she chooses not to use, or is not eligible for, the specialized services provided by this program.

Selected Case Law

- The federal Court in Zukle v. University of California (1998) said that the medical school did not discriminate against a learning disabled student who failed to meet the school's academic standards even after being provided reasonable accommodations, because she could not meet the essential eligibility requirements and was not an "otherwise qualified individual with a disability."
- The following three cases illustrate some of the complexities, found in the ADA definition of "an otherwise qualified individual with a disability that limits one of more major life functions":
 - In Bragdon v. Abbott (1998), the Supreme Court broadened the three pronged definition of an individual with disability by extending the meaning of "major life activity" to the consideration of the "significance" of the "life activity." In this case, the court found that reproduction and the sexual dynamics surrounding it are central to the life process itself."

- The federal Court in Gilday v. Mecosta County (1997) said, “...the determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis, without regard to mitigating measures, such as medicines assistive or prosthetic devices,” and found that diabetes in its uncontrolled state did substantially limit a major life activity.
- The federal Court in Francis v. City of Meriden (1997) said the third “prong” of the ADA definition of an individual with a disability, “regarded as having a disability,” applies to instances when an employer believes, however erroneously, that the individual suffers from an “impairment” that, if it truly existed, would be covered under the ADA and that the employer discriminated against the individual on that basis.
- The federal Court in Myers v. Hose (1995), held that “‘reasonable’ accommodation is by its terms most logically construed as that which presently, or in the immediate future, enables the employee to perform the essential functions of the job in question.”
- In Rogers v. Bennett (1989) the federal Court, in an action by state and local school districts against the U.S. Department of Education, found that the U.S. Department of Education did have authority to issue regulations necessary to implement Section 504 of the Rehabilitation Act, as well as the authority to exercise supervisory powers over state and local school districts to implement the regulations.

SECTION 2 MAKING THE FORMAL COMMITMENT

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compliance check 333 are you “legal”?

A district has made the required formal commitment if it has:

- Adopted a policy stating that the district/college does not discriminate on the basis of disability in its educational programs, services, activities or employment.
- Developed a grievance/complaint procedure that gives students and employees the opportunity to resolve allegations of discrimination based on disability and protects individuals exercising this right from retaliation or coercion.
- Implemented a process to provide all campus print information and materials in a variety of alternative formats (e.g., audio tape, large type, Braille), and most importantly, in a timely manner.
- Appointed a Section 504 and ADA Coordinator.
- Taken “continuing steps” to inform students, employees and the general public of its policy of nondiscrimination on the basis of a disability, as well as the name, address and business phone number of the Section 504 and ADA Coordinator.
- Notified students, applicants, employees and the general public prior to the beginning of each academic year that all the district’s vocational opportunities will be offered without regard to race, color, national origin, sex or’ disability. (Vocational Education Guidelines [IV - 0])
- Informed applicants for admission and other interested parties (e.g., advocates for individuals with disabilities), of the availability of services, academic adjustments and auxiliary aids for students with disabilities.
- Prohibited pre-admission inquiries as to whether an applicant is disabled.
- Conducted an ADA Self Evaluation designed to determine whether any district/college policies or practices are discriminatory on the basis of disability.
- Included individuals with disabilities and/or representatives of advocacy groups for the disabled, as members of the Self Evaluation Committee.
- Revised any district/college policy and practice that is found to be discriminatory.

- Developed a system to communicate with individuals with disabilities who are applicants, students, employees. or members of the public in a manner that is as effective as its communications with others.
- Assured that all programs and services are accessible to individuals with disabilities.
- Developed an interactive process to provide academic modification for students who have verifiable needs.
- Developed an ADA Transition Plan providing for the removal of any barriers to accessibility and completed any structural modifications.
- Designated an employee by name, as the person responsible for the implementation of the ADA Transition Plan. (Also see Regulatory Notes in the “NOTES” segment at the end of this section.)
- Established procedures to ensure that admission/placement testing does not discriminate against an applicant on the basis of impaired sensory, manual or speaking skills.
- Kept on file and available for review, a description of modifications and/or steps taken to overcome the effects of any past discrimination based on disability.
- Entered into written contractual agreements only with outside entities that have provided the district/college with written assurance that they do not discriminate on the basis of disability.
- Made reasonable accommodations for employees with disabilities. (Also see Selected Case Law in the “NOTES” segment at the end of this section.)
- Engaged in on-going review of institutional policies and practices to ensure compliance with Section 504 and the ADA. action that exemplifies the spirit of Section 504 and the ADA...



action that exemplifies the spirit of Section 504 and the ADA...

A district demonstrates the spirit of Section 504 and the ADA if it has:

- Allotted sufficient time and authority to the Section 504 and ADA Coordinator to implement both the letter and spirit of the law.
- Appointed campus level Section 504 and ADA Coordinators in districts that have more than one college.
- Fostered a close working relationship between the Section 504 and ADA Coordinator and the Coordinator of the DSP&S, the Facilities Director and the Director of Human resources.

- Publicized the availability of district/college information in a variety of alternative formats.
- A Board of Trustees, an administration and a staff committed to providing a quality education in an environment hospitable to **all** students.

[[[[[**NOTES-Formal Commitment**

Regulatory Notes

Both the ADA and Section 504 require the district/college to take all steps necessary to ensure compliance.

Regulatory References

- Section 504, § 104.6
- ADA, Title II, §§ 35.105-107, 35.150 (c)(d)
- Government Code, Title 5, §§ 55522, 55525
- Vocational Education Guidelines (IV - 0) - Public Notification

Matriculation Regulations

§ 55522 - Special Accommodations requires, in part, that “matriculation services for ... students with disabilities shall be appropriate to their needs, and the community college districts shall ... make modifications in the matriculation process or use alternative instruments, methods or procedures to accommodate the needs of such students.”

Selected Case Law

- In Zukle v. University of California (1998), in a case where a medical student with a learning disability was dismissed for failure to meet the academic standards, a federal Court held that an educational institution’s academic decisions as to whether an individual is “otherwise qualified” should be deferred to, absent proof that their application has no purpose other than to deny an education to an individual with disabilities.
- In Bartlett v. New York State Board of Law Examiners (1997), the federal Court said, “An accommodation is generally any change in the work (or school) environment, or in the way things are customarily done that enables an individual with a disability to enjoy equal opportunities.”
- In Jacques v. Clean-U12 Group, Inc. (1996) the federal Court held, “the determination of reasonable accommodation is a cooperative process in which both employer and employee must make reasonable efforts and exercise good faith.”

SECTION 3 GETTING OUT THE WORD

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compliance check 333 are you “legal”?

A district/college that has met its obligations to “get out the word,” can answer these questions in the following manner:

- **What Is Disseminated?**
 - A statement that the district/college does not discriminate on the basis of disability in its services, programs, activities and employment.
 - The Section 504 and ADA Coordinator’s name, business address and telephone number.
 - Information about the availability of complaint procedures designed to resolve allegations of discrimination based on a disability, with a brief description of the procedure that must be followed to file a complaint.
 - A notice to interested persons of how to obtain information about the location and existence of services for students with disabilities.
 - Information about the availability of all of the above in a variety of alternative formats, such as Braille, large print and/or audio taped materials.

- **Who Is Informed?**
 - All students and employees.
 - The general public, in alternative formats, upon request.
 - Members of minority communities, in the languages of those communities.
 - Applicants for admission.
 - Applicants for employment.
 - Unions and professional organizations which have collective bargaining or professional agreements with the district/college.

- **What Is Assured?**
 - The notice includes a statement that the district/college will not discriminate on the basis of disability in admission to, access to, and treatment in its programs and activities, as well as in its employment practices.

- **Where Does The Notice Appear?**

- Section 504 and ADA information appears in materials such as the schedule of classes, college catalog, brochures, student/employee handbooks, promotional, orientation and admissions materials, and job announcements.
- A nondiscrimination clause on the basis of disability must appear in all written contracts entered into with other entities, such as: contractors and subcontractors who provide services, including public and private schools and training centers; outside employers who employ or train students through job placement, cooperative work experience education and clinical training; community-based organizations that provide counseling, day care or other services; labor unions involved with apprenticeship training; and community organizations that use the district/college’s facilities.

- **How Often Is The Notice Distributed?**

- The district/college takes “continuing steps” to distribute the district/college’s nondiscrimination policy via newspapers, publications and the other documents mentioned above. (Note: The Vocational Education Guidelines require notice prior to the beginning of each school year.)



demonstrating the spirit of Section 504 and the ADA...

A district that exemplifies the spirit of Section 504 and the ADA:

- Prints and prominently displays the nondiscrimination notices and information about the availability of the related grievance procedure in a clear, readable and eye-catching manner that avoids confusing legal language.
- Provides information on the Matriculation Regulations in various alternative formats to communicate with individuals having impaired sight or hearing.
- Helps students and employees with disabilities understand how to seek redress for actions they believe to be unfair, and assures them that their concerns will be given full consideration.



NOTES-Getting Out The Word

Regulatory Notes

The ADA requires that information be effectively communicated to all interested parties regarding nondiscrimination protections provided in the district/college’s services, programs or

activities. Further, the obligation to communicate effectively with individuals with disabilities is significantly increased under the ADA, e.g., through the use of prompt auxiliary aids and services, qualified interpreters, **direct access** emergency services, speech synthesizers, etc.

Regulatory References

- Section 504, § 104.8
- ADA, Title 11, §§ 35.105-107
- Vocational Education Guidelines (IV - 0) - Public Notification
- Government Code, Title 5, § 55520 - Matriculation Services

See the **Appendix** for Public Notification Check List

SECTION 4 RECRUITMENT AND ADMISSIONS

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compliance check 333 are you “legal”?

A district/college has complied with recruitment requirements and admissions obligations if it has:

- Adopted a clear working definition of a “qualified individual with a disability” as a person with a disability “who meets academic and technical standards requisite to admission to, or participation in, the college’s education or activity.” (The U.S. Supreme Court has further defined “an otherwise qualified person as one who is able to meet all of the program requirements in spite of his [her] handicap.” See Selected Case Law under the “NOTES” segment at the end of this section.)
- Established and applied criteria that do not limit the admission of “qualified individuals with disabilities” to the college or to any of its specialized schools or programs.
- Developed and adopted application forms that avoid pre-admission inquiry as to whether an applicant is disabled.
- Informed applicants and other interested parties of the availability of auxiliary aids, services and academic adjustments.
- Placed no limitation upon the number and/or the proportion of individuals with disabilities who may be admitted.
- Adopted admission/placement tests which are selected and administered in such a way that the results for an applicant with impaired sensory, manual or speaking skills, reflects his/her aptitude or achievement level rather than reflecting the individual’s impaired skills.
- Made provisions to offer admission/placement testing for persons with impaired sensory, manual or speaking skills as often and in as timely a manner as other admission tests.
- Ensured that admission/placement tests are administered in facilities that are accessible to individuals with disabilities.
- Made telephone registration available to individuals who are hearing or speech impaired to the same extent it is available to the entire population.
- Established a process to communicate with individuals with disabilities who are applicants, students or members of the public as effectively as information is exchanged with others.
- Made admission and financial aid information, the college catalog and the schedule of classes available in a variety of alternative formats.

- Adopted policies and practices which ensure that no student with disabilities is denied the accommodations necessary for the assessment process if he or she chooses not to use the specialized matriculation services. (Also see Specialized Services under the “NOTES” segment at the end of this section.)



action that exemplifies the spirit of Section 504 and the ADA...

A district/college has demonstrated its spirit in recruitment and admissions if it has:

- Utilized population statistics to determine whether individuals with disabilities are under represented in the student population.
- Developed a recruitment program to attract students with disabilities.
- Made affirmative efforts to reach specific groups of disabled people who are under represented in the community college student population.
- Checked each step in the admission and registration process to make certain that they are free from bias against potential students with disabilities. (Use consultants with disabilities to help review the process.)
- Arranged furniture and counter areas so that wheelchair users can be served face-to face.
- Made provisions for alternative space when the admissions/registration area is noisy to serve students who may need a quieter, less hectic environment.



NOTES-Recruitment And Admissions

Regulatory References

- Section 504, § 104.42 - Admission and Recruitment
- ADA, Title 11, §§ 35.149-150, 35.130-135
- Vocational Education Guidelines, (IV - K) - Eligibility
- Government Code, Title 5, § 55522 - Special Accommodation and § 55520 - Matriculation Services

Specialized Services

- Districts/colleges may authorize delivery of modified matriculation services to students with disabilities through DSP&S.

- The fact that the district/college provides special programs for students with disabilities does not affect the right of an individual with disabilities to utilize regular programs.

Selected Case Law

- In Southeastern Community College v. Davis (1979), the U.S. Supreme Court interpreted the meaning of “otherwise qualified,” as used in Section 504. The court held that “Section 504 by its terms does not compel educational institutions to disregard the disabilities of handicapped individuals or to make substantial modifications in their programs to allow disabled persons to participate. Instead, it requires only that an ‘otherwise qualified’ handicapped individual not be excluded from participation ... solely by reason of his [her] handicap,” indicating that “the mere possession of a handicap is not permissible ground for assuming an inability to function in a particular context.” In this case, the Court found that a college’s denial of an applicant with a serious hearing disability to a registered nursing program was proper.

SECTION 5 ACCESSIBILITY

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compliance check 333 are you “legal”?

A district/college that has complied with program accessibility requirements can assure that:

- No “qualified individual with a disability” is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because the district/college’s facilities are inaccessible to, or unusable by, a “qualified individual with a disability.” (**Program accessibility** means that each program or activity is readily accessible to individuals with disabilities, when the program or activity is viewed in its entirety.) (Also see Selected Case Law in the “NOTES” segment at the end of this section.)
- In **pre-Section 504 facilities** (built prior to June 1977), the focus is on making programs and activities accessible rather than making facilities accessible.
 - Each program and activity is provided in the “most appropriate integrated setting.”
 - Program accessibility may have been accomplished through such means as: redesign of equipment, moving classes or services to accessible buildings, assignment of aides to individuals with disabilities, alteration of existing facilities or any other method that results in making the program or activity accessible to an individual with a disability.
 - If pre-1977 facilities exist, the college/district has provided **notice** (in a variety of alternative formats) to interested persons, of how to obtain information on the location and existence of services, activities and facilities that are accessible to and usable by individuals with disabilities. (A program cannot be considered accessible unless the essential needs of the disabled are met in the facility, e.g., accessible rest rooms, drinking fountains, handicapped designated parking, doors that open with ease, etc.)
- In **post-Section 504 facilities** (construction started after June 1977), the **facility accessibility** standards have been met. (Facility accessibility is a higher standard than **program accessibility**. It requires that the entire facility is free of architectural barriers and is usable by people with disabilities.)
 - All structures, or parts of structures, are designed and built in such a manner that they are readily accessible and usable by individuals with disabilities and comply with the appropriate federal architectural standards. (Also see Architectural Approval and Federal Architectural Standards under the “NOTES” segment at the end of this section.)
- An ADA Transition Plan has been developed describing the steps necessary to remove structural barriers to program accessibility.

- Assembly areas, concert halls and theaters having audible communication also provide assistive listening systems.
- Audio amplification systems or services for lectures and meetings accommodate the students who are hearing impaired, e.g., through the use of assistive listening devices, closed-captioned audiovisuals, and qualified sign translators.
- At least one route of travel to the main entrance of the facility is accessible to everyone, including those with disabilities.
- Campus directional maps and signage are in a variety formats.
- Visual emergency alarms accompany audible alarms in all cases.
- Provisions have been made to give people who use wheelchairs a choice of seating and allows them and their nondisabled friends to sit together in classrooms and other settings.



action that exemplifies the spirit of Section 504 and the ADA...

The spirit of Section 504 and ADA accessibility is demonstrated when the district/college staff:

- Is sensitive to the potential for discrimination as a result of the lack of access for individuals with disabilities.
- Creates a hospitable environment for individuals with disabilities.
- Is knowledgeable about the accessibility standards of both the ADA and Section 504.
- Understands the Matriculation Regulations mandate for special accommodations.
- Pays particular attention to the “point of entry” where people come to make inquiries, apply for admission, register, pay parking fees, etc., and makes certain that directional signs can be seen from the perspective of a person in a wheelchair even when a facility is crowded.
- Situates passenger loading zones for public transportation in such a way that individuals with disabilities can readily locate the main entrance from the point of arrival.

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NOTES-Accessibility

Regulatory Notes

The ADA stipulates that all of the district/college's programs, services and activities must be readily accessible and usable by individuals with disabilities regardless of federal funding. The ADA provides that after January 26, 1992, facilities designed, constructed, altered, by or on behalf of, or for the use of the district/college, must conform to **either** Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

Regulatory References

- Section 504, § 104.2 - Program Accessibility
- ADA, Title II §§ 35.149-151
- Vocational Education Guidelines (IV - N) - Access and Admission
- Government Code, Title 5, § 55522 - Special Accommodations

Architectural Approval

Approval of architectural changes or plans by the California Office of the State Architect does not relieve the district/college of the responsibility for compliance with the requirements of Section 504 and the ADA.

Matriculation Regulations

§ 55522 - Special Accommodations requires, in part, that “matriculation services for ... students with disabilities shall be appropriate to their needs, and community college districts shall ... make modifications in the matriculation process or use alternative instruments, methods or procedures to accommodate the needs of such students.”

Selected Case Law

- The Supreme Court in Pennsylvania Department of Correction v. Yeskey (1998) held that, “State prisons fall squarely within Title II of the ADA which prohibits a public entity from discriminating against a “qualified individual with a disability” in receiving “benefits of the services, programs and activities.” (This is noteworthy for colleges offering educational programs in, or in cooperation with, penal institutions.)
- In Martin v. City of Los Angeles (1984), in an action by a person with disabilities to obtain wheelchair access to a police station constructed in 1964, the Court held that where construction was prior to the effective date of the regulations, the regulations required only “program access,” not a “barrier free building.” In this case there was wheelchair access through a door other than the main entrance. This meets the pre-Section 504 requirement to make the program accessible, but does not meet the ADA standard for facilities constructed or modified after ADA's effective date since a wheelchair user must take a less direct route to use the services.

SECTION 6 ACADEMIC ADJUSTMENTS

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compliance check 333 are you “legal”?

The requirements to make academic adjustments have been met when the instructional and supervisory staffs:

- Have modified the academic requirements to ensure they do not have the effect of discriminating against an applicant or student who is a “qualified individual with disabilities.”
- Do not impose rules on students with disabilities that have the effect of limiting their participation in educational programs or activities, such as prohibiting tape recorders in classrooms or guide dogs in campus buildings.
- Institute methods to evaluate students who have impaired sensory, manual or speaking skills, which ensure that the results represent students’ achievements in their courses rather than reflecting impairments.
- Provide students with disabilities the same opportunity to participate in physical education courses as the general student population.
- Ensure that physical education facilities and programs are readily accessible to individuals with disabilities (e.g., the pool, weight room, showers and locker room.)
- Have provided students who are disabled with modified processes or the use of alternative instruments, methods or procedures for matriculation. (Also see **Matriculation Regulations** under the “NOTES” segment at the end of this section.)
- Utilize modifications for academic requirements which may include: changes in the length of time for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and the adaptation of the manner in which specific courses are conducted.
- Provide auxiliary and computer aids, such as audio taped texts, interpreters, readers in libraries, learning labs, computer labs, career centers, and as needed, in classrooms for students with visual impairments.
- Provide services and equipment adapted for use by students with manual impairments in the settings listed above.

- Make interpreters and/or amplifying equipment available to enable students who are deaf and hearing impaired to function to the fullest in classrooms, labs and other settings essential to full participation in the educational programs.
- Make internet accessible to and usable by individuals with disabilities to the same extent it is available to others.
- Utilize closed-captioned audiovisual materials in all programs.
- Assure “distance” learning opportunities are accessible to and usable by individuals with disabilities to the same extent they are available to others.



action that exemplifies the spirit of Section 504 and the ADA...

A staff demonstrates the spirit of Section 504 and the ADA by:

- Utilizing the DSP&S to help provide for academic adjustments and accommodations.
However, use of this program by the student is voluntary and no student may be denied necessary accommodations because he/she chooses not to use the program.
- Making special efforts to enable students with disabilities to participate in post secondary education by offering classes via interactive television, taping of class lectures, and seeking assistance from appropriate services, for example.
- Being sensitive to the fact that students with disabilities are often reluctant to ask for special considerations even when they may need auxiliary aids or additional assistance in order to be successful in the class.
- Working closely with the DSP&S staff and the Section 504 and ADA Coordinator to assure that services are provided to students with disabilities in an effective, coordinated manner.



NOTES-Academic Adjustments

Regulatory Notes

The ADA requires that all of the district/college’s programs, services and activities be readily accessible and usable by individuals with disabilities. This obligation of program accessibility includes acquisition or redesign of equipment, and assignment of aides to individuals with disabilities.

Regulatory References

Section 504, §§ 104.44-47 - Academic Adjustment & Nonacademic Services

ADA, Title 11 §§ 35.149-150

Vocational Education Guidelines (VI - A) - Accommodation for Students with Disabilities

Government Code, Title 5, § 55522 - Special Accommodations

Academic Requirements

A college can impose requirements that may limit access for a student with disabilities, if the requirements can be demonstrated as essential to the instructional program, or are directly related to any licensing requirements. Each situation must be viewed on a case-by-case basis, for example, it may seem reasonable to assert that a student using a wheelchair could not perform the essential tasks in a program designed to train students to install and maintain roof-top solar panels. A student did, in fact, enroll in such a program after informing the instructor that his family owned a solar heating company and he wished to one day manage the business with the full understanding of the technology and its practical application. Not only was the student admitted to the class, but an academic adjustment was made to enable him to have a hands on experience by moving the solar panel assembly project to the ground. On the other hand, a student who is unable to climb stairs or a ladder, could reasonably be excluded from a fire fighting program on the grounds that he/she could not perform the essential functions of the program or the job.

Auxiliary Aids

Districts/colleges do not need to provide attendants, individually prescribed devices, readers for **personal** use or study, or other devices or services of a **personal** nature.

Selected Case Law

- In Bartlett v. New York State Board of Law Examiners (1997), the Court has held that failure to accommodate an individual with a learning disability by not allowing extended time to complete a Bar examination amounted to discrimination under both Section 504 and the ADA.
- In Guckenberger v. Boston University (1997) a federal District Court case held that "... a university can refuse to modify academic degree requirements, even course requirements, that students with learning disabilities cannot satisfy - as long as it undertakes a diligent assessment of the available options and makes a professional, academic judgment that reasonable accommodation is simply not available."
- The federal Court in Wynne v. Tufts University School of Medicine (1992) held that in a case of a learning disabled medical student there was a real obligation on the academic institution to seek suitable means to reasonably accommodate an individual with disabilities, but it had no obligation to lower its standards or otherwise unduly affect its programs in the process.
- Brookhart v. Illinois State Board of Education (1983) is a case brought by students with disabilities who had been denied high school diplomas because they failed to pass minimal competency tests. The Court held that the students were "otherwise qualified students" who

had suffered discrimination in violation of the Rehabilitation Act, because they were kept from demonstrating their capacity to pass the test due to its format and the environment in which the test was given.

- The Court held in Southeastern Community College v. Davis (1979), that Section 504 does not compel educational institutions to disregard the disabilities of individuals or to make substantial modifications in their programs to allow disabled persons to participate. Instead, it requires only that an “otherwise qualified handicapped individual” not be excluded from a program “solely by reason of his [her] handicap,” indicating that mere possession of a disability is not permissible ground for assuming an inability to function in a particular context. In this case, the Court ruled that a student with a serious hearing loss was properly denied admission to a registered nursing program since she was not “otherwise qualified.”

SECTION 7 ACCESS TO NONACADEMIC PROGRAMS

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compliance check 333 are you “legal”?

A district/college has met its obligations to provide access to nonacademic programs, if it has:

- Taken measures to ensure that students with disabilities are not excluded from regular programs, activities or services and not required to accept services or benefits designed specifically for individuals with a disability.
- Made certain that athletic facilities and programs are accessible, e.g., a pool if there is a swim program, the weight room, the shower and locker room facilities.
- Maintained practices which ensure that where separate or different athletics programs are offered to students with disabilities, those programs are: (1) in an appropriate integrated setting, and (2) not used as a rationale for excluding “qualified students with disabilities” from competing for positions on regular teams, or participating in programs that are not separate or different.
- Consistently selected facilities for meetings, performances and activities that are accessible to individuals with disabilities.
- Avoided discrimination in counseling and academic placement services for students with disabilities. (Also see **Disproportionate Enrollment Patterns** under the “NOTES” segment at the end of this section.)
- Established personal, academic and vocational counseling, and academic placement services for students with disabilities equal to those provided to the rest of the student population.
- Made provisions for counselors to effectively communicate with students who have hearing impairments. (Also see **Students With Hearing Impairments** under the “NOTES” segment at the end of this section.)
- Avoided counseling students with disabilities toward more restrictive career objectives than other students who have similar interests and abilities. (Also see **Career Counseling** under the “NOTES” segment at the end of this section.)
- Provided the same opportunities for college-sponsored employment, internships and mentoring to students with disabilities as to all other students.
- Assisted students in obtaining outside employment in a manner that affords equal opportunity for students with disabilities.

- Maintained procedures to ensure that if the college provides any significant assistance to student organizations, membership practices in those organizations do not discriminate on the basis of disability.
- Established a process to provide appropriate alternative media, auxiliary aids and services to individuals with disabilities to ensure equal access to programs and services.
- Provided drinking fountains and public telephones that are accessible to individuals with disabilities where such amenities are provided for others.
- Arranged facilities to allow individuals with disabilities to obtain materials and services without assistance, e.g., some computer stations and study areas in classrooms, labs and library are not obstructed by chairs; displays of brochures, flyers and application forms are on racks and counters that can be reached by someone using a wheelchair; and computers/printers with Braille printing capacity are identified with Braille signs, etc.
- Signed contracts with apprenticeship programs that include assurances of nondiscrimination on the basis of disability.
- Developed a process to provide promotional/informational material in a variety of alternative formats, such as large print, Braille or audio tape, in a timely manner.
- Taken measures to ensure that members of the general public who have disabilities are able to gain access and enjoy the benefits of college sponsored events, to the same extent as others.
- Held meetings in facilities that provide handicap access to the speaker's stand. (Failure to do so implies that people in wheelchairs or persons who can not climb stairs have nothing to say.)
- Provided telephone access to general information, registration, job lines, etc., for the hearing and speech impaired to the same extent access is provided to others.



action that exemplifies the spirit of Section 504 and the ADA...

Nonacademic programs that exemplify the spirit of Section 504 and the ADA have:

- Promoted an active student body that supports and respects each member of its diverse population and includes disability as part of the diversity commitment.
- Made efforts to create an environment which encourages students with disabilities to participate in nonacademic programs and activities.

- Sponsored activities that educate the college community about the skills, talents and achievements of individuals with disabilities, e.g., disability awareness week.
- Included positive illustrations of individuals with disabilities in promotional materials.
- Arranged equipment in the cafeteria, bookstore, library, learning center, student lounge and exercise/weight rooms, etc., in a manner that facilitates independence by individuals with disabilities.
- Conducted job development activities for students with disabilities.
- Developed a working relationship with DSP&S.

[[[[[**NOTES-Access to Nonacademic Programs**

Regulatory Notes

The ADA regulations are based on the principal that individuals with disabilities must be provided an equally effective opportunity to participate in programs, activities and services in the “mainstream”. The fact that the college offers special programs does not affect the right of an individual with disabilities to participate in regular programs.

Regulatory References

- Section 504, § 104.47 - Nonacademic Services
- ADA, Title 11, §§ 35.130-135
- Vocational Education Guidelines (V - A through E) - Counseling, (VII - A and B) - Work Study, Cooperative Work Experience, and Apprenticeship Training
- Government Code, Title 5, § 55523 - Counseling and Advisement

Disproportionate Enrollment Patterns

- If a vocational education program disproportionately enrolls male or female students, minority or nonminority students, and/or under enrolls students with disabilities, then the college must take steps to ensure that the disproportionate patterns are not the result of discrimination in counseling materials and activities. Both the actions and **inactions** of counselors should be considered. (Vocational Education Guidelines (V - B))
- Data must be collected to ensure that the implementation of the Matriculation Regulations does not result in a disproportionate impact on any group of students based on ethnicity, gender, disability or age. (Matriculation Regulations, § 55514 - Data Collection)

Students With Hearing Impairments

Counselors must be able to effectively communicate with students who are deaf and hearing impaired. This may be accomplished through the use of interpreters.

Career Counseling

In the career counseling of students with disabilities, it is permissible to provide factual information about licensing and certification requirements that may present obstacles to their pursuit of a particular career. (Section 504, § 104.47 [b])

SECTION 8 FINANCIAL ASSISTANCE

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compliance check 333 are you “legal”?

A district/college has met its obligations in administering its financial aid program if it has:

- Developed and implemented procedures to distribute financial assistance in a manner that does not discriminate against individuals with disabilities.
- Provided the same amount and type of financial aid for students with disabilities as for all other students.
- Applied the same eligibility standards for students with disabilities and students who have no disabilities.
- Avoided assisting or cooperating with any foundation, trust, agency, individual or organization which provides scholarships or grants in a manner that discriminates on the basis of disability.
- Assured that the aggregate benefit from grants/scholarships does not have the effect of discriminating against individuals with disabilities.
- Offered on-campus job opportunities to students with disabilities in proportion to their representation in the student population.
- Provided assistance in making campus and outside employment available to students with disabilities to the same extent that such opportunities are made available to the student body as a whole.
- Communicated with students and members of the public who are disabled as effectively as it communicates with others.
- Made information about financial aid programs available in a variety of alternative formats.



action that exemplifies the spirit of Section 504 and the ADA...

A financial aid program that gets into the spirit:

- Distributes financial aid information to agencies and programs that serve individuals with disabilities within the community.

- Encourages outside employers to hire students with disabilities.
- Has formed a close working relationship with DSP&S.
- Provides a clear, accessible path to financial information and materials.
- Makes any financial aid information and materials that are accessible through computers available in formats that facilitate use by individuals who are vision impaired.

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NOTES-Financial Assistance

Regulatory References

- Section 504, § 104.46 - Financial Assistance to Students
- ADA Title 11, § § 35.102-104, 35.149-150
- Vocational Education Guidelines (VI - B) - Student Financial Assistance

SECTION 9 HEALTH AND WELFARE BENEFITS AND SERVICES FOR INDIVIDUALS WITH DISABILITIES

TTTTT

compliance check 333 are you “legal”?

A district/college that provides health, welfare and other social services for individuals with disabilities has met its obligations if it has:

- Reviewed the coverage of all health, welfare and other social services to determine that there is no discrimination on the basis of disability inherent in the qualifying criteria or coverage.
- Made information about all health, welfare and other social services available in a variety of alternative formats.
- Provided assistance to insure that campus health services are available to students with disabilities to the same extent that such opportunities are made available to the student body as a whole.
- Avoided offering different or separate benefits or services to students with disabilities from those provided to students with no disabilities.
- Established procedures and provided appropriate auxiliary aids and services to ensure effective communications about health services and treatment with individuals who have speech and sensory disabilities - particularly in emergencies, e.g., by having ready access to qualified interpreters, written explanations of procedures, etc.
- Effectively notified individuals with disabilities of the benefits, services and written material concerning waivers of rights and consent to treatment in a variety of alternative formats.
- Provided a clear, accessible path to these services in a facility that is usable by individuals with disabilities.



action that exemplifies the spirit of Section 504 and the ADA...

A district/college that gets into the spirit has:

- Made an effort to hire staff in social and health services positions who are knowledgeable about the needs of students with disabilities.

- Created an environment which enables students with disabilities to utilize and benefit from the college health services, rather than be given an automatic referral to DSP&S.
- Worked cooperatively with DSP&S.
- Provided referral information regarding specialized services for students with disabilities, such as attendant care, support groups, drug/alcohol rehabilitation programs, adaptive physical education programs, etc.
- Sponsored seminars for students with disabilities on unique health issues related to having a disability.

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NOTES-Health and Welfare Benefits And Services

Regulatory Reference

- Section 504, § 104.46 - Health, Welfare and Social Services
- ADA Title 11, § § 35.102-104, 35.149-150

SECTION 10 STUDENT HOUSING

TTTTT

compliance check ~~333~~are you “legal”?

A district/college with housing services has met its obligations if it has:

- Provided convenient and accessible housing for students with disabilities that is comparable to any housing provided for students who have no disabilities.
- Allocated rooms so that space availability for students with disabilities is proportionate to the space available for students with no disabilities.
- Established housing fees that are equal for all students, with or without disabilities.
- Make modifications to the house rules to accommodate students with disabilities, as appropriate.
- Assured itself that agencies or individuals who work cooperatively to place students in off-campus housing do not discriminate on the basis of disability.
- Developed a process to assure that any off-campus housing, designed exclusively for students with disabilities, is comparable in quality to off-campus housing for students without disabilities, and that it is available proportionate to the demand
- Procedures for providing appropriate auxiliary aids and services which ensure effective communications with individuals with disabilities.
- Provided “direct access” emergency telephone services to individuals who rely on TDD or computer modem communication.
- Installed visual emergency alarm systems with each audible alarm.

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action that exemplifies the spirit of Section 504 and the ADA...

A housing program that gets into the spirit has:

- Resident Advisors who are cognizant of the special needs of students with disabilities, and who are aware of the ADA requirements for accessible facilities and services.

- Provided resident advisors with information that will enhance their effectiveness in serving the special needs of students with disabilities.
- Developed strategies that facilitate participation of students with disabilities in resident hall activities.
- Included information about accessibility in any off-campus housing listings.

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NOTES-Student Housing

Regulatory Notes

The nature of the ADA protection against discrimination for individuals with a disability is at least equal to those provided in Section 504. The ADA provides that a college/district's programs, activities and services must be readily accessible and usable by individuals with disabilities.

Regulatory Reference

- Section 504, § 104.46 - Health, Welfare and Social Services
- ADA Title II, §§ 35.102-104, 35.149-150
- Vocational Education Guidelines (VI - C) - Housing

SECTION 11 EMPLOYMENT

TTTTT

compliance check ~~333~~are you “legal”?

A district/college has met its obligation to comply with Section 504 and the ADA in employment if it has:

- Defined a “qualified handicapped person,” with respect to employment, as a person with disabilities who, with reasonable accommodation, can perform the essential functions of the job in question. (See Essential Terms on page 1.)
- Developed and implemented procedures to provide reasonable accommodation for the known physical or mental limitations of a applicant or employee who is a “qualified individual with a disability,” e.g., by job restructuring or providing part-time or modified work schedules, by the acquisition or modification of equipment or devices, or by providing readers or interpreters, etc. (Also see Selected Case Law under the “NOTES” segment at the end of this section.)
- Adopted and uses procedures that ensure employment practices and policies do not discrimination against an individual with a disability in any aspect of employment, including: recruitment, hiring, training, compensation, promotion, tenure, demotion, transfer, layoff and return from layoff, termination, job assignment, job classification, paid and unpaid leave, and fringe benefits.
- Avoided contractual or other relationships that have the effect of subjecting applicants or employees who are “qualified individuals with a disability” to discrimination based on disability.
- Adopted criteria that prevent the use of any employment test or selection process that screens out persons with disabilities.
- Developed employment tests for applicants with impaired sensory, manual or speaking skills which accurately reflect his/her job skills, aptitude or other factor being measured rather than his/her impairment.
- Avoided pre-employment inquiries into whether the applicant is disabled, and has prohibited pre-employment medical examinations. (However, the district/college may make pre-employment inquiries into an applicant’s ability to perform job-related functions.)
- Organized employer-sponsored activities, including recreation or social events, in a manner that does not discriminate against employees with disabilities.
- Established a means to communicate with applicants, employees or members of the public who are disabled as effectively as it communicates with others.



action that exemplifies the spirit of Section 504 and the ADA...

An employment program that exemplifies the spirit of Section 504 and the ADA has:

- Implemented an active recruitment effort to attract the “qualified individual with a disability” who are underrepresented in the ranks of community college employees statewide.
- Established intern and/or mentoring programs and in-service programs to help disabled employees prepare for advancement.
- Created an environment that is hospitable to employees with disabilities.



NOTES-Employment

Regulatory Notes

The language and standards of the ADA employment regulations were modeled on Section 504. The prohibition against employment discrimination against individuals with disabilities is enforced by the Equal Employment Opportunity Commission (EEOC).

In the area of employment, you should be familiar with the following definitions:

- Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with reasonable accommodation, can perform the essential functions of the position.
- Essential functions are those tasks and responsibilities that the person who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation. The term does not include marginal functions of the position.
- Reasonable accommodation means, in general, any change in the work environment or the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. These accommodations fall into three categories: (1) those to ensure equal opportunity in the application process, (2) those to enable an employee with disabilities to perform the essential functions of the position, and (3) those that enable an employee with disabilities to receive equal benefits and privileges of employment as received by other employees.

Regulatory References

- Section 504 §§ 104.4.11, 104.12, 104.13, 104.14 - Employment Practices
- ADA, Title 11, §§ 35.104 et seq. and ADA Title I §§ 1630 et seq.
- Vocational Education Guidelines, (VIII - A through F) - Employment

Selected Case Law

- The federal Court in Barnett v. U.S. Air, Inc. (1998) said that “both parties have a duty to assist in the search for appropriate reasonable accommodation and to act in good faith” and “that the employer would be liable for discrimination if a reasonable accommodation was available, but the employer did not act on it.”
- In Ford v. Schering-Plough Corp. (1998), the federal Court held “that Title I of the ADA does permit disabled individuals to sue their former employers regarding disability benefits.”

RESOURCES

WEB SITES OF NOTE

Americans with Disabilities Act Document Center, (<http://janweb.icki.wvu.edu/kinder/>)
Accessibility guidelines for buildings and facilities, including the content of ADA Accessibility Guidelines (ADAAG), EEOC enforcement guidelines and other elements of ADA.

Americans with Disabilities Act Information Center, (<http://www.ada-infonet.org>)
Comprehensive directory of resources, introductory level of ADA information and ADAAG checklist and text.

Disabilities, Discrimination and the Americans with Disabilities Act,
(<http://www.lawguru.com>)
Provides local information on disability discrimination.

SELECTED AGENCIES AND ORGANIZATIONS

American Association of Community Colleges (AACC), One Dupont Circle, NW, Suite 4 10, Washington, DC 20910, (202) 728-0200, (www.aacc.nche.edu)
Telecommunication services to community colleges, including satellite network programming. Analysis of key trends and statistics. Publications: Directory of Disability Support Services at Community Colleges, 1996 and Disability Support Practices in Community Colleges, Selected Examples, 1993.

Association on Higher Education and Disabilities (AHEAD), 1540 West 5th, P.O. Box 21192, Columbus, OH 43221-0192, (614) 488-4972, (<http://www.ahead.org>)
Operates several special interest groups useful for community colleges, including ADA Coordinators. Provides research referral system on disability topics. Publications: 1998 Publications Catalog, Don't Cry for Me: I'm in Compliance, 1997 (1996-97 court and agency decisions) and Dancing with Wolves: ADA Compliance in the '90s, 1996 (1995-96 court and agency decisions) summarizes and interprets ADA and Section 504 college relevant topics.

The Braille Institute of America, 741 N. Vermont, Los Angeles, CA 90029, (323) 663-1111, nationwide, (800) BRAILLE, (www.brailleinstitute.org)
Information, counseling on equipment, classes on living with vision loss, use of the cane, typing and crafts. Six centers in Southern California. Publications: Braille Mirror, a monthly magazine in Braille and on audiotape. Linked to national library service with 65,000 titles.

California Assistive Technology Systems (CATS), Department of Rehabilitation, 2000 Evergreen, Sacramento, CA 95815, (800) 390-2699, (800) 900-0706 (TTY), (<http://www.catsca.org>)

Statewide project serves to identify and eliminate barriers that inhibit the use of assistive technologies and make the full range of those technologies available to people with disabilities. Free electronic CATS News Service (via e-mail) includes articles, stories and reviews of assistive equipment and devices.

California Attorney General, Civil Rights Enforcement Division, Public Inquiry Unit, PO Box 944255, Sacramento, CA 94244-2550, (800) 952-5225, (800) 952-5548 (TDD), (www.dss.cahwnet.gov/getser/deaf,svcs.html)

Extensive information on ADA comparing federal to state requirements and directory of federal, state and local agency references. Publication: Legal Rights of Persons with Disabilities, March, 1997.

California Department of Rehabilitation, ADA Implementation Unit, 2000 Evergreen Street, Sacramento, CA 95815, (916) 263-8674, (916) 263-8672 (TDD)

Department plays a primary role in California's efforts to implement the ADA. Publications: Americans with Disabilities Act: A Comprehensive Overview, Access Guide: Survey Checklist and numerous other publications.

California Department of Social Services, Office of Deaf Access, 744 P Street. MS 19-91, Sacramento, CA 95814, (916) 653-8320, (916) 653-7651 (TDD)

Orientation, training, video library, compliance and eight community organizations.

Publication: California Directory of Resource Information for the Deaf and Hard of Hearing, July, 1997.

California High Tech Center Training Unit, 21050 McClellan Rd., Cupertino, CA 95014 (408) 996-4636 or (800) 411-8954 (<http://www.htctu.thda.edu>)

State-of-the-art training and support facility for California community college faculty wishing to acquire or improve teaching skills, methodology and pedagogy in assistive and instructional technology. Continuously evolving one-day workshops transmit information to community college staff. Facilitates the Book Exchange for community colleges, CSUs and UCs with information about books available in alternate formats such as Braille, electronic text, and audiotapes, (<http://bookex.htctu.fhda.edu>).

Center for Accessible Technology, 2547 8th Street, 12A, Berkeley, CA 947 10, (510) 841-3224, (www.el.net/CAT)

Conducts research, develops solutions and provides information on the use of technology to facilitate computer accessibility for people with disabilities.

Disability Rights Education and Defense Fund (DREDF), 2212 6th Street, Berkeley, CA 94710, (510) 644-2555, (www.dredf.org)

Houses the Disabilities Rights Clinic Legal Education Program. Publication: Explanation of Content of ADA, 1993. Also operates ADA Hotline, (800) 466-4232.

Greater L.A. Deaf Council (GLAD), 222 Laverna Ave., Los Angeles, CA 9004 1,
(323) 478-8000, (www.gladinc.org)

Information on interpreters, independent living skills, sign language classes and community education. Books and devices available. Publication: Directory of Southern California Centers and Resources.

National Mental Health Association (NMHA), 1021 Prince Street, Alexandria, VA
22314-2971, (703) 684-7722, (<http://www.nmha.org>)

Provides advocacy, public education and services for the improvement of mental health. Publications: The ADA and People with Mental Illness, A Guide to Accommodations for People with Mental and Emotional Health Disorders, 2nd Edition, 1997 and Aiding People in Conflict: A Guide for Law Enforcement, 1988.

National Rehabilitation Information Center (NRIC), 8455 Colesville Rd., Silver Springs,
NID 20910, (800) 346-2742, (www.naric.com/naric)

Basic library of information and referral to local services. Publication: Guide to Resources for ADA, 2nd Edition, 1996. Includes books, periodicals, guides, manuals and lists of private and public organizations that focus on the rights assured and responsibilities imposed by the ADA.

NorCal Center on Deafness, 1820 Tribute Road, Suite A, Sacramento, CA 95815,
(916) 921-1045

Serves 24 Northern California counties. Variety of client service programs, resources and information.

Office of the State Architect, Publications Department, 1130 K Street, Suite 101, Sacramento,
CA 95814, (916) 445-8000

Architectural standards and guidelines, including a new reference, California Accessibility Reference Manual, April, 1999.

Pacific Disability and Business Technical Assistance Center, 2168 Shattuck Ave., Suite 301,
Berkeley, CA 94704, (800) 949-4232, (www.pacdbtac.org).

Extensive ADA listing of publications and services. Houses publications for other organizations.

Telecommunications for the Deaf, Inc. (TDI), 8630 Fenton Street, Suite 604, Silver Springs,
NID 20910-3803, (301) 589-589-3786 (Voice), (301) 589-3006 (TTY), Fax (301) 589-3797,
(www.tdi-online.org)

Publications: Emerging Access Teletype Self Evaluation Kit, 1995 contains emergency personnel training on use of TTY's and serving deaf and hard of hearing callers, National Directory of TTY, 1998 and Using Your TTY-TDD, 1993, (Video).

FEDERAL ENFORCEMENT AGENCIES

(With Technical Assistance Information)

Architectural and Transportation Barriers Compliance Board, 1331 F Street, # 1000, Washington DC 20004, (800) 872-2253, (800) 993-2822 (TDD), (<http://www.access-board.gov/>)
Specific information about requirements for accessible design in new construction and alterations. Publications include the Uniform Federal Accessibility Standards (UFAS), April 1988, UFAS Accessibility Checklist, June 1990, UFAS Retrofit Manual, April 1991, Assistive Listening Systems, October 1991, ADA Accessibility Guidelines (ADAAG), July 1991, ADAAG Checklist, February 1993 and ADAAG Review. Advisory Report, with recommendations to harmonize ADAAG with other accessibility codes, November 1996.

Department of Education, Office of Civil Rights (OCR), Region IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556-4275, (415) 473-7786 (TDD)

Agency responsible for enforcing access for students. and investigates students' complaints. Publications and information available.

Department of Justice, Civil Rights Division, Office on the ADA, P.O. Box 66118, Washington, DC 20035-6118, (202) 514-0301, (202) 514-0383 (TDD), (www.usdoj.gov/crt/ada)

Information about the ADA requirements affecting public services and public accommodations.

Department of Transportation, 400 7th Street SW, Suite 50 1, Washington, DC 20590, (202) 366-9305, (202) 755-7687 (TDD)

Information about ADA requirements regarding transportation.

Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507, (800) 669-3362, (800) 800-3302 (TDD)

Provides information about employment provisions of the ADA. The federal agency responsible for processing employment related complaints.

Federal Communications Commission, 1919 M Street NW, Washington DC 20554, (202) 623-7260, (202) 632-6999 (TDD)

Specific information about ADA requirements affecting telecommunications.

APPENDIX

PUBLIC NOTIFICATION **3**LIST TO COMPLY WITH SECTION 504 AND THE VOCATIONAL EDUCATION GUIDELINES, (IV - 0)

	Yes	No
• The notice of the district’s nondiscrimination policy covers nondiscrimination on the basis of:	_____	_____
– Sex.....	_____	_____
– Disability.....	_____	_____
– Race, color and national origin	_____	_____
• This policy notice is disseminated to:	_____	_____
– Students	_____	_____
– Employees and all sources of employment.....	_____	_____
– The general public.....	_____	_____
– Members of minority communities with limited English language skills, in the languages of those communities, with a statement assuring “that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.”	_____	_____
• It includes:	_____	_____
– The name of the Section 504/ADA Coordinator	_____	_____
and his/her business address and phone #	_____	_____
– The name of the Title IX Coordinator	_____	_____
and his/her business address and phone #	_____	_____
– A brief summary of vocational program offerings and admissions criteria.....	_____	_____
• Information about the availability of a complaint procedure accompanies the notice	_____	_____
• Information about the availability of the policy/procedure in a variety of alternative formats	_____	_____

Note: The Vocational Education Guidelines require annual public notification, while Section 504 and ADA require “continuing steps” to notify students and employees.