

CHANCELLOR'S OFFICE LEGAL OPINIONS

SPECIAL CLASSES PARTICULAR LEGAL PROVISIONS

4.8 Particular Legal Provisions.

Several kinds of courses have legal requirements over and above those explained above, that relate either to their functions or their subject matter. These requirements are explained in this section.

4.8.1 Special Classes for the Disabled (DSP&S Courses or Sections).

Beginning January 1, 1995, the local authority to approve new credit courses designed specifically for disabled students will be the same as for all other credit courses. That is, new DSP&S credit courses not part of approved programs are covered under the delegated approval authority for stand-alone courses. New non DSP&S courses, like all other noncredit courses, continue to require the approval of the state Chancellor's Office.

Classes specially designed for disabled students may be a section of an existing course, taught in accordance with the Outline of Record for that course, but supplemented to define the specific conditions that obtain in that particular section in order accommodate stated disabilities. Special classes may also refer, however, to distinct courses with their own Outlines of Record designed either to meet educational objectives unique to a population with specific disabilities or to supplement the standard objectives in an otherwise similar course, with objectives unique to that population. In either case, special classes-like all courses and sections of courses-must be primarily instructional in nature or must have objectives that fall within the instructional mission of the California Community Colleges. Such courses cannot be designed primarily to provide group activities or services, (e.g. physical activity, counseling, or assessment) but must provide systematic rather than incidental instruction in a body of content or skills whose mastery forms the basis of the student grade. Courses designed to meet the needs of students with specific functional limitations "...shall be open to enrollment of students who do not have disabilities..." CCR T.5 §56028. The course description published in the college catalog may note that it has been designed for students with specific disabilities, but it may not restrict enrollment to such students, nor require students to register for classes through the DSP&S program or counselor, nor otherwise violate the open enrollment provisions of state law for the California Community Colleges. Special classes are part of an approved program when they are designed to provide alternative ways to fulfill the course requirements for an approved degree or certificate program. Such alternatives include the restructuring of the content, modification of the pace of instruction, use of instructional methods and/or equipment adapted to the students' specific needs.

Assignments and examination methods may also be used that allow disabled students to demonstrate their mastery of course and program objectives by alternative means. As part of an approved program, such new courses do not require separate Chancellor's Office approval, although they will need to be submitted to the Chancellor's Office with the new program application.

Sections of courses in the regular curriculum especially adapted to enable students to meet the regular course objectives in alternative ways also do not require separate Chancellor's Office approval. In the case of new DSP&S courses, in demonstrating that they have met the three conditions necessary to maintain delegation authority with respect to stand-alone courses, college training and curriculum approval processes must assure that in the case of new DSP&S courses: . . .Curriculum committees responsible for reviewing and/or recommending special class offerings shall have or obtain the expertise appropriate for determining whether the requirements of this section are satisfied [CCR §560281. In addition, the Course Outlines of Record for DSP&S courses must demonstrate that those who implement the curriculum review processes on the local campus are fully cognizant of DSP&S regulations, able to apply all Title 5 and other state standards to such courses with the expected rigor, and able to clearly distinguish instructional objectives that fall within the mission of the community colleges from activity and service objectives that do not.

In summary, DSP&S Course Outlines of Record must:

- (a) Specify what disability or disabilities the course is designed to address
- (b) Clarify what objectives the course is to fulfill as they relate to these disabilities
- (c) Show why a special course is needed to meet this need, rather than it's being met through accommodation in a regular course
- (d) Specify how it will be determined that the objectives have been achieved
- (e) Explain what disability-specific instructional methods, materials, equipment, etc. will be used and why.

CCR T.5 Section 56028. Special Class Instruction.

Special classes are instructional activities offered consistent with the provisions of Section 56000 and designed to address the educational limitations of students with disabilities who are admitted to the institution pursuant to Education Code Sections 76000 et seq. and who would be unable to substantially benefit from regular class college classes even with appropriate support services or accommodations. Such classes generate revenue based on the number of full-time equivalent students (FTES) enrolled in the classes.

Such classes shall be open to enrollment of students who do not have disabilities. However, to qualify as a special class, a majority of those enrolled in the class must be students with disabilities. Special classes offered for credit or noncredit shall meet the applicable requirement for degree credit, non-degree credit, or noncredit set forth in Sections 55002 and 55805.5 of this part. In addition, special classes shall:

- (a) Be designed to enable disabled students to compensate for educational limitations and/or acquire the skills necessary to complete their educational objectives;
- (b) Employ instructors who meet minimum qualifications set forth in Section 53414 of this division.
- (c) Utilize instructional methods or materials specifically designed to address the educational limitations of students with disabilities. Curriculum committees responsible for reviewing and/or recommending special class offerings shall have or obtain the expertise appropriate for determining whether the requirements of this section are satisfied.

(d) Utilize student/instructor ratios determined to be appropriate by the district given the educational limitations of the students with disabilities enrolled in each class. Class size should not be so large as to impede measurable progress or to endanger the well-being and safety of students or staff.

CCR TX5 Section 56029. Special Class Course Repeatability.

Repetition of special classes is subject to the provisions of Sections 5576 I-63 and 52161 of this division. However, districts are authorized to permit additional repetitions of special classes to provide an accommodation to a student's educational limitations pursuant to state and federal nondiscrimination law. Districts shall develop policies and procedures providing for repetition under the following circumstances:

- (a) When continuing success of the student in other general and/or special classes is dependent on additional repetitions of a specific class;
- (b) When additional repetitions of a specific class are essential to completing a student's preparation for enrollment into other regular or special classes; or
- (c) When the student has a student educational contract which involves a goal other than completion of the special class in question and repetition of the course will further the achievement of that goal.

4.8.2 Repeatable Courses.

Courses that develop similar skills but (a) at increasingly sophisticated levels of practice, and/or (b) that are applied to different content (such as a drama course in which students master increasingly demanding roles in different plays) may be offered as repeatable courses, if approved for that purpose by the Chancellor's Office, or if the college has delegated course approval authority. Each such repetition of a course must be designed to create a discernibly higher level of achievement such that the academic progress is clearly defined and the grading standards increase substantially with each repetition. A given student may take the repeatable course for credit, and for state apportionment, for up to the number of times the college has specified, but for no more than a total of four times altogether.

A college may indicate the sequence of repeatable courses with differing letters or numbers or course titles, such as 101 A-D, or 101-4, or "Beginning", "Intermediate", and "Advanced". Or the college may simply permit a student to enroll up to three additional times after completion the course in question for the first time. But the college may not do both: it cannot both designate a series of courses of increasingly advanced work in the same subject area, and then permit repeated enrollment at each of those levels.

CCRT.5 Section 58161(c).

State apportionment for repetition of courses not expressly authorized by this section may be claimed upon approval of the Chancellor in accordance with the following procedure:

- (1) The district must identify the courses which are to be repeatable, and designate such courses in its catalog;
- (2) The district must determine and certify that each identified course is one in which the course content differs each time it is offered, and that the student who repeats it is gaining an expanded educational experience for one of the two following reasons:

- (A) Skills or proficiencies are enhanced by supervised repetition and practice within class periods; or
 - (B) Active participatory experience in individual study or group assignments is the basic means by which learning objectives are obtained.
 - (3) The district must develop and implement a mechanism for the proper monitoring of such repetition. The attendance of students repeating a course pursuant to this subsection when approved by the Chancellor may be claimed for state apportionment for more than three semesters or five quarters.
- Colleges with delegated approval authority are not required to submit courses they wish to designate as repeatable to the Chancellor's Office for approval, but may approve repeatability locally on the basis of the standards laid out above. Repeatable courses are reported to the Chancellor's Office through the statewide Management Information System (MIS).

4.8.3 Distance Learning Courses or Sections.

Until the limited term authorization ends in the Year 2000, all approved community college courses may be taught at a distance aided by communication technology if the following conditions are met:

- (a) The course is separately approved for distance instruction by the district's certified approval procedures.
- (b) Standards of quality that normally apply to curriculum and instruction are met.
- (c) Special records are maintained and reports made. The number of students per class meets district policies.
- (d) For transfer courses, the instructor meets in person with students on some regular basis, supplemented if desired by phone or letters.
- (e) For non-transfer courses, instructor maintains regular contact with students in person or as specified in the version of the course approved for distance education.

CCRT.5 Section 55316 Criteria.

Courses offered pursuant to this Chapter shall:

- (a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and
- (b) Be recognized by an institution of the University of California or the California State University upon transfer to that institution.

CCRT.5 Section 55316.5 Additional Courses.

Notwithstanding any other provision of law, after June 1, 1995, the following additional types of courses may be offered pursuant to this Chapter, consistent with guidelines developed by the Chancellor:

- (a) Nontransferable courses designed to meet the requirements of Sections 55805.5, 55806, and 55002(a) or (b);
- (b) Noncredit courses conducted as distance education independent study. This Section shall become inoperative on July 1, 2000, unless a later-adopted regulation deletes or extends this date.

ARE SPECIAL CLASSES MANDATED?

Legal Opinion 0 92-12

ISSUE:

You have asked whether community college districts are required to offer special classes for students with disabilities.

ANALYSIS:

Many community colleges offer separate “special classes” for students with disabilities. Such classes are defined in Section 56028 of Title 5 of the California Code of Regulations. That Section makes clear that special classes are to be “designed for students with specific disabilities to accommodate functional limitations which would otherwise inhibit the student’s ability to succeed in general college classes.” Section 56028 further provides that such classes “shall utilize specialized instructional methods and/or materials” and “instructors and support staff trained in the use of adaptive devices and/or special instructional methodologies.”

However, nothing in Section 56028 or any other provision of state law would compel a community college district to offer special classes. Prior to the passage of Senate Bill 1854, Stats. 1990, c 1372, the Education Code did contain provisions (commencing with Sections 78440 et seq.) which specifically authorized community college districts to offer special classes for adults with disabilities. Those provisions were repealed by SB 1854, but this did not really alter state law on this subject because the language of Section 78440 merely permitted offering special classes and did not, in any way, make them mandatory.

It has been argued that California community colleges, with their open admission system, might be required to offer special classes as a means of providing accommodations for some students with disabilities pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794). The theory is that some students have such severe disabilities that they cannot benefit from regular college courses, even with appropriate support services, and that special classes are the only available means of accommodation. However, we are not persuaded that the law mandates this result.

We note first that admission to community colleges is not without restrictions. Education Code Section 76000 requires admission of students with high school diplomas, but beyond that, it allows districts to limit enrollment in the credit program to those “capable of profiting from the instruction offered.” Even for the noncredit program, Section 78401 provides that “classes for adults shall be open for the admission of adults and any minors who, in the judgment of the governing board, may be qualified for admission thereto.” Thus, a college may determine the curriculum it wishes to offer and limit admission to those students who are able to benefit from that program. Furthermore, Title 5, Section 58106, provides that, once admitted, “students may be required to meet necessary and valid prerequisites established pursuant to this section. In addition, a community college district may also limit enrollment in a course based on health and safety considerations, facility limitations, or legal requirements imposed by statute or regulations.”

Section 504 requires that these admission and enrollment requirements be applied in a nondiscriminatory manner. It also requires that accommodations, including some adjustment in academic requirements, be made to permit “otherwise qualified” persons with disabilities to participate in the educational program offered by the college. But, it is our view that Section 504 stops short of requiring curricular changes of the magnitude involved in offering special classes.

For one thing, the regulations implementing Section 504 seem to discourage special class instruction since Section 504.43(d) provides that: “a recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.” Moreover, in *Southeastern Community College vs. Davis* 442 U.S. 397 (1979), the U. S. Supreme Court noted that Section 504 “does not encompass the kind of curricular changes that would be necessary to accommodate respondent. Such a fundamental alteration in the nature of a program is far more than the ‘modification’ the regulation requires.” (u, at 409-410.) The Court went on to comment that “the language and structure of the Rehabilitation Act of 1973 reflect a recognition by Congress of the distinction between the evenhanded treatment of qualified handicapped persons and affirmative efforts to overcome the disabilities caused by handicaps Section 504 imposes no requirement upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person.” (Id., at 4 12-4 13.) This is not to say that special classes may not, in some instances, be the most practical or desirable method for accommodating students with disabilities. For example, a district might reasonably conclude that offering adaptive physical education classes specifically designed for students with disabilities is preferable to making the necessary changes in facilities and instructional technique necessary to accommodate such students in regular physical education classes. But, if the district were willing to make those accommodations, it appears that the law would allow it to insist that students with disabilities participate in the regular classes.

CONCLUSION:

Accordingly, we hold that community college districts are not required to offer special classes, provided appropriate accommodations are made to allow otherwise qualified students with disabilities to participate in the regular educational program offered by the district.

NONDISABLED STUDENTS IN SPECIAL CLASSES Legal Opinion L 90-13

ISSUE:

You have asked whether special classes for students with disabilities may be closed to Non-disabled students.

ANALYSIS:

The general rule, set forth in Title 5 Section 58100, is that community college courses should be open to all students.

That section provides:

58100. Unless specifically exempted by statute, every course, course section, or class for which average daily attendance is to be reported for State aid shall be open for enrollment and participation by any person who has been admitted to the college and who meets the prerequisites of such course as defined in section 58104. However, Education Code Section 84500.1 appears to create an exemption from this open enrollment requirement for special classes by providing that "no community college district shall report for attendance or average daily attendance to the board of governors for apportionment any classes:

(1) if the district receives full compensation for direct education costs for the class from any public or private agency, individual or group of individuals, or
(2) if such classes are not located in facilities clearly identified in such a manner, and established by appropriate procedures, to ensure that attendance in such classes is open to the general public, except those authorized pursuant to section 78440 and those in State hospitals." Thus, classes authorized under Section 78440 and those in state hospitals may be claimed for apportionment purposes even if they are not open to the general public. Nevertheless, other considerations may prevent a college from excluding non-disabled students from special classes in most instances. For one thing, allowing special classes to be closed to enrollment of non-disabled students would be contrary to basic principles governing all DSP&S services. Section 56000 of Title 5 sets forth six general criteria to which all DSP&S services must adhere. Subsection (f) requires that "services and/or instruction are provided in the most integrated setting possible consistent with the mission of the community colleges." Moreover, the nondiscrimination requirements of AB 803 (Government Code 11135 et seq.) would appear to impose a similar limitation even where DSP&S funds are not being used. Section 98252 of the Title 22 regulations implementing AB 803 provides that "it is a discriminatory practice for a recipient of State support to fail to administer programs and activities in the most integrated setting appropriate to the needs of qualified disabled persons." It is certainly true that some kinds of specialized instruction could not be provided to disabled students who were enrolled in regular classes. This provides the justification for establishing classes taught by specially trained personnel with a curriculum which is tailored to the needs of students with disabilities. However, given the strong policy in favor of integration, it is difficult to imagine very many situations which would justify excluding the occasional non-disabled student who might wish to take a special class. Indeed, it is our view that in order to close a special class to

non-disabled students, a college would need to demonstrate compelling necessity by showing that the presence of non-disabled students would preclude or substantially interfere with the education of the disabled students in the class.

CONCLUSION:

Special classes authorized under Education Code Section 78440 and those in state hospitals may be claimed for apportionment funding even if they are not open to all students. Nevertheless, nondiscrimination requirements and DSP&S program regulations would seem to prohibit closing special classes unless the college can clearly demonstrate that the presence of non-disabled students would preclude or substantially interfere with the education of the disabled students.