

**CALIFORNIA COMMUNITY COLLEGES  
CHANCELLOR'S OFFICE**

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July 13, 1992

Dear:

I am writing in response to your letter of June 22, 1992, in which you asked for our opinion about how to determine "the essential requirements of the course" for purposes of developing your policy on academic adjustments for students with disabilities. In particular, you asked whether these "essential requirements are specified in the official course outline or the class syllabus.

We begin our discussion by referring to the basic law on this subject which is contained in the applicable regulations implementing the Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). In particular, 34 C.F.R. 104. 44...

(a) provides that: "a recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section." This provision points out two important concepts.

First, the exception applies only where a requirement is "essential to the program of instruction being pursued by the student". This is a stricter standard than that suggested in your letter. It is not sufficient to show that a requirement is essential for a particular course or section of a course, it must: be essential to the overall "program of instruction" (certificate, degree, etc.) being pursued by the student.

Second, Section 104-44 (a) makes clear that the recipient (in this case the District) bears the burden of proof in demonstrating that the requirement is essential. Thus, this judgment should not be made unilaterally by an individual faculty member, Instead, the decision should be made by an appropriate District official or body on the basis of evidence which will provide the District a basis for defending its actions if the decision is challenged.

Turning to your specific question, it is our view that the course outline of record not the individual instructor's syllabus should be used to determine what is essential. To our knowledge the concept of a course syllabus is not recognized or defined in law. Moreover, state law makes quite clear that all basic requirements for a course are set forth in the outline of record which must be followed by each instructor. Title 5 Section 550n2 (a) provides, in pertinent part:

(3) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files; and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of

knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside of class assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and other specifications defined in the course outline of record.

Thus, the course outline defines the scope, objectives, content, assignments, instructional methodology, and evaluation techniques to be used by each instructor. Indeed, it is difficult to imagine anything which could be "essential" to the course which would not fall into one of these categories of elements specified in the outline of record.

Accordingly, it is our opinion that the outline of record, not the instructor's syllabus, should be used in determining what is essential. However, it is important to keep in mind that a determination, based on the outline record, that a particular requirement is essential to the course does not end the inquiry. In order to satisfy Section 104.44, it is then necessary to determine whether that requirement is also essential to the program of instruction being pursued by the student.

I hope this information is helpful. If you have any further questions, you may contact me at (916) 327-5692.

Sincerely,

Ralph Black  
Assistant General Counsel

Cc: Jim Locke

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