

June 29, 1993

Senator Bob Dole
Hart Senate Office Building
Room 141
Washington, D. C. 20510

Attn: Dr. Alexander Vachon

Dear Dr. Vachon:

I am a high school teacher in Central Texas and visited with you some weeks ago about Section 504 and IDEA legislation. You were kind enough to send me copies of federal legislative directives, and I want to thank you for following through with your commitment to assist me with those materials.

Now I have one more favor to ask of you. I have spent hours reading and analyzing numerous sources regarding Section 504 and IDEA regulations. Would you please read over the enclosed documents and tell me if any of my conclusions is inaccurate. I plan to supply copies of these enclosures to every administrator, faculty, and school board member in our District so that we will be in compliance this fall. I am also working with a lawyer at the Association of Texas Professional Educators, and she also is proofing these documents. Surely with both of you assisting me, we can turn out a product which will help our school to meet the needs of our students.

Thank you for your expertise. Please do not hesitate to mark up the copies or call me if you have any questions. I am working full-time this summer but do have an answering machine on which you can leave messages.

Please relay to Senator Dole how grateful we are to his unswerving commitment to fiscal responsibility. We agree that "Cut spending first, Stupid!" should be on the lips of every legislator.

Sincerely,



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SECTION 504 STUDENTS

MRS. DONNA GARNER

Since all schools should base their Sect. 504 programs on actual federal and state legislation, those primary sources and the interpretations of those sources have been used in the preparation of this document.

1. Section 504 is federally mandated by the Office of Civil Rights. The regulations carry with them no federal funds to implement them; however, a District which accepts any federal funds can have those funds withheld if found in noncompliance with Sect. 504 regulation (Gallegos 1).

2. IDEA (commonly called Special Education by educators) is federal regulation 300.5 and specifically defines handicapped students to include those who have been formally evaluated and found to be "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, autistic, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped or to have a traumatic brain injury or specific learning disability" (Gallegos 2). Section 504, however, is much broader than IDEA and includes a broader definition of handicapped students.

3. Under FR 104.3(j), a Sect. 504 is a child who has a substantial physical or mental impairment which limits one or more major life activities such as caring for oneself, performing manual tasks, walking, seeing, learning, hearing, speaking, breathing, or working. The Department of Education has stated that it will give particular attention in its enforcement "to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973" ("Part" 386, 401). The Department of Labor says, "The term 'individual with severe handicaps' means an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment" ("Statute" 180).

4. The following physical conditions are some of the 504 handicaps which do not normally fall under IDEA. "504 students may include but are not limited to those who have had a lengthy psychiatric stay in the hospital due to depression; dysthymic disorder; AIDS; behavioral disorders resulting in incarceration; drug and alcohol addiction; social maladjustment; ADHD (attention deficit hyperactivity disorder); Tourette's; obesity; hepatitis B virus carriers; or juvenile diabetes" (Gallegos 2). (The federal regulations do not seem to make any distinction between ADHD and ADD; therefore, the terms will be used synonymously in this paper.)

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5. Environmental, cultural, and economic disadvantages are not covered in 504 such as prison records, age, or homosexuality ("Part" 401).

6. If the handicapping problems do not impair a child's life activities, then he is not considered to be eligible for the 504 program (Gallegos 2).

7. If a student needs special education but does not qualify under the IDEA qualifications, he should be referred to the 504 coordinator who should determine what programs and/or services might be appropriate, including any remedial and compensatory programs that the District offers ("Handicapped" 4-5).

8. A 504 must be evaluated before he is enrolled in the 504 program and is placed in the regular education classroom (or if qualified, in the IDEA program). According to an April 29, 1993, memo from Jeanette J. Lim, to the Regional Civil Rights Directors, "School districts may use the same process for evaluating the needs of students under Section 504 that they use for implementing IDEA." She also said that school districts "may have a separate process for evaluating the needs of students under Section 504; however, they must follow the requirements for evaluation specified in the Section 504 regulation" (2).

9. A committee must place a child in 504. If the child is not an IDEA student, then a 504 committee should include the child's primary teacher, an individual to interpret the test results, and a person familiar with placement options. The parents do not have to be included in this committee (Gallegos 4).

10. 504 students are to be served by personnel who are NOT paid out of IDEA funds (Gallegos 2-3). If content mastery teachers are paid by IDEA funds, then content mastery teachers cannot serve anyone who is not an IDEA student; in other words, content mastery cannot serve 504's who are not IDEA students. If content mastery is to be used for 504 students, then those CM teachers have to be paid out of compensatory or remedial education funds.

11. 504 students should be placed in regular education classrooms unless the District demonstrates that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. "...aids, benefits, and services to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs" ("Part" 387). Again it is stated, "To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results" ("Part" 404). This means that we as

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classroom teachers must provide 504 students the opportunity to achieve, but we are not required by law to produce equal results ("Part" 404).

12 . Under 504 a District "must ensure that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs" (Gallegos 6). Since the intent of the law is to make sure that a handicapped person receives services which are equal to those received by the nonhandicapped student, a District who "gives" grades to a 504 student without holding him to the same academic standard as that of a nonhandicapped student could be held in violation of the law and could open itself up to expensive lawsuits (Knight 1).

13. The District must have documentation of its plan to provide the 504 child a free, appropriate education (Lim 2).

14. The District must evaluate each child who is suspected of having a condition that substantially impairs his learning and must take action to remediate the problem in the educational setting (Gallegos 3).

15. The District must identify 504's annually (Gallegos 3).

16. Tests/evaluations must be validated for the specific purposes for which they are used by providing "documentation, supplied by the test developer or other research groups, that they successfully measure what they claim to measure; are used only for the specific purpose for which they were developed; and are administered in conformance with the instructions provided by the publisher" (Singleton 2). The tests cannot reflect the student's handicapping condition. For instance, if a child is suspected of being ADHD (ADD--attention deficit disorder), he may need shorter tests or tests with frequent breaks (Gallegos 3).

17. The evaluation data should include aptitude/achievement tests, teacher recommendation, physical condition, social or cultural background, adaptive behavior, etc. If the student is not suspected of having an IDEA handicap, then the District cannot pay for the evaluation with IDEA money (Gallegos 3).

18. A 504 child must be reevaluated periodically (suggested every three years) by people who are not paid by IDEA funds ("Part" 413).

19. Reasonable modifications may include preferential seating, frequent breaks, shortened assignments, or modified tests (Gallegos 3). In a letter from Robert R. Davila to the Chief State School Officers dated September 16, 1991, the following modifications are mentioned:

providing a structured learning environment; repeating and simplifying instructions about in-class and homework

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assignments; supplementing verbal instructions with visual instructions; using behavioral management techniques; adjusting class schedules; modifying test delivery; using tape recorders, computer-aided instruction, and other audio-visual equipment; selecting modified textbooks or workbooks; tailoring homework assignments; use of one-on-one tutorials; classroom aides and note takers; involvement of a 'services coordinator' to oversee implementation of special programs and services, and possible modification of nonacademic times such as lunchroom, recess, and physical education. (7)

20. The District should try to accommodate the 504 child in the regular education classroom before moving him to a more restrictive setting. The OCR says:

It should be stressed that where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by para. 104.34. ("Part" 104, 412)

21. ATPE Attorney Pamela Knight wrote in her comments attached to her letter:

If educating the 504 child in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily, then he may be moved to a more restrictive setting. For instance if a child is dyslexic, notetaking assistance or oral testing should be provided first in the regular classroom before the 504 is moved to a more restrictive setting. The federal regulations do not say that the 504 child must make a 70 or above; they simply attempt to safeguard that the students' grades reflect actual academic achievement rather than limitations imposed by the handicapping condition. For example, a student who is unable to write legibly due to a handicapping condition may not receive a failing grade on a test because the teacher cannot read the answers; however, if the same student is provided a typewriter or a person to record the students' answers, and the student either gives the wrong answers or fails to answer at all, the student may receive a failing grade because the grade is not a reflection of limitations caused by the handicapping condition. (8)

22. Overcrowding violates the 504 regulations--16 EHLR 387 (OCR 1989) -- (Gallegos 4).

23. If parents have a concern about the District's actions regarding the identification, evaluation, or placement of the disabled student, then they may have an impartial hearing before

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someone not employed by the District, not a School Board member, or not related to a School Board member ("Handicapped" 5).

24. The 504 coordinator must notify parents prior to performing an individual evaluation ("Part" 395-396).

25. The District must allow the parents/guardians to examine their child's records upon request. The procedure should be the same as afforded the parents/guardians of the nonhandicapped student (Gallegos 5).

26. If a 504 student is removed from his educational placement for more than 10 consecutive days (District cannot create a series of shorter disciplinary removals that create a pattern designed to circumvent the 10 day rule), then the 504 student must be given a reevaluation (Gallegos 4).

27. The Fifth Circuit Court has ruled that a 504 student cannot be expelled (suspended for more than 6 days in a semester) for behavior related to his handicapping condition. The Office for Civil Rights said that if the behavior is related to a 504 student's handicapping condition, then a reevaluation meeting must occur to decide whether a change in current educational placement is needed. If the behavior is not related to his 504 handicapping condition, then he may be expelled (Gallegos 5). Suspension means removal from the regular classroom program. On-campus-suspension is considered to be a suspension. Suspension may be served in any location that the district designates (Knight, comments on first draft, 8).

28. If the school can show that the 504 child is in possession or use of drugs or alcohol, then he can be expelled under the same regulations as the nonhandicapped student (Gallegos 6).

29. The State Board of Education has ruled that if a genuine emergency exists (compelling health, safety, or welfare reason), then the 504 can be removed from school under the same regulations as the nonhandicapped student (Gallegos 6).

30. State-mandated, at-risk programs can serve 504 students if the 504's qualify under the at-risk regulations. Compensatory funds may be used for 504's. This means that the modifications as stated on the attached at-risk document can satisfy the regulations for the 504's (Gallegos 6).

31. According to a letter dated April 29, 1993, from Jeanette J. Lim at the United States Department of Education, some confusion has arisen over whether a school must evaluate every child suspected of having ADHD (ADD) based solely upon parental suspicion or demand. "If the LEA does not believe that the child needs special education or related services, and thus refuses to evaluate the child, the LEA must notify the parents of their due process

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rights" (2). She also states that if an ADD student does not have a physical or mental impairment which substantially limits a major life activity, then he does not qualify as a 504 (3).

32. LeGree S. Daniels, Assistant Secretary for Civil Rights, has stated, "Section 504 does not require a school district to award a standard high school diploma to a handicapped student who is unable to satisfy established requirements for the awarding of the diploma" (2).

33. Michael L. Williams in a letter to Senator Lloyd Bentsen said that local districts are not pressured to provide 504 services to students who are not covered by the 504 regulations. He also stated that the Department of Education cannot terminate federal funds without giving the LEA a hearing in front of an administrative law judge who is not associated with OCR (3-4).

34. "It is not the intention of the Department [USED], except in extraordinary circumstances, to review the result of individual placement...However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system" ("Part" 410-411).

END NOTES

Daniels, LeGree S., Assistant Secretary for Civil Rights, United States Department of Education. Letter to Gary M. Clark, 3 Nov 1988.

Davila, Robert R., Assistant Secretary, Office of Special Education and Rehabilitative Services, United States Department of Education. Memo to Chief State School Officers, "Clarification of Policy to Address the Needs of Children with Attention Deficit Disorders within General and/or Special Education," 16 Sep 1991.

Gallegos, Elena and Laurie Rodriguez. "Section 504's Prohibition Against Discrimination due to Handicap: Applicability to Students in School." TEXAS SCHOOL ADMINISTRATORS' LEGAL DIGEST, May 1991.

Knight, Pamela Parker, Attorney, Association of Texas Professional Educators. Letter to Donna Garner, 8 June 1993.

Lim, Jeanette J., Acting Assistant Secretary for Civil Rights, United States Department of Education. Memo to Regional Civil Rights Directors Regions I-X, "Clarification of School Districts' Responsibilities to Evaluate Children with Attention Deficit Disorders," 29 Apr 1993.

"Part 104.3 -- Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal

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Financial Assistance." OFFICE FOR CIVIL RIGHTS, EDUCATION. 34CFR Ch. 1, 1 July 1990.

Williams, Michael L., Assistant Secretary for Civil Rights, United States Department of Education. Letter to Honorable Lloyd Bentsen, 29 Jan 1992.

"Section 504 Handicapped Students," TEXAS ASSOCIATION OF SCHOOL BOARDS' MANUAL, issued date 02/21/91, update 39, FB (H)-P; issued date 7/8/91, update 40, FB (H)-P; issued date 12/05/91, update 41, FB (L)-P; issued date 10/12/92, update 43, FB (H)-P.

"Section 504 - Statute, 29 U. S. C. A. 794," Department of Labor, 1990 Amendment.

Singleton, Harry M., Assistant Secretary for Civil Rights, United States Department of Education. Memo to John E. Palomino, "San Francisco Unified School District, OCR Case #09-85-1013--Policy Request," 4 Apr 1985.

SPECIAL EDUCATION

Mrs. Donna Garner

All schools need to base their Special Education policies on actual federal and state regulations; therefore, primary sources have been used in this document whenever possible.

"The Child-Centered Educational Process" published by the Texas Education Agency, based upon IDEA federal regulations.

"Education for the Handicapped Law Report," Reg. 104.33-39:1 Jan 1990.

1. A free, appropriate education must be accessible to the Special Education (IDEA -- federal law acronym for Special Education) child. He should be educated in the least restrictive environment; his needs must be met as adequately as the nonhandicapped student.
2. SE (Special Education) child must be counseled toward the same career objectives as are nonhandicapped students who have similar interests and abilities.
3. IDEA eligibility must be reviewed every three years as long as a child is in special education -- more often if requested by parent or school (34 CFR 300.531, 300.534; 19 TAC 89.233).
4. The initial assessment must be finished and the report written within 30 school days from the date the district's SE staff received the referral and within 60 calendar days from the date the referral was initiated by the district.
5. If the parent/guardian does not agree with the assessment, he may ask for an independent educational evaluation by a qualified examiner not employed by the District. The District must pay for the outside evaluation or else must show that the District assessment was appropriate.
6. If parent/guardian wants to pay for the assessment himself, the results must be considered by the ARD committee.
7. The ARD committee must meet within 30 days after the initial assessment report is completed. If this runs into summer, the ARD committee may meet up until the first day of classes in the fall.
8. A draft version of the IEP can be developed by school personnel before the ARD meeting.
9. The IEP must include how much time the SE child will spend in regular ed., special ed., and related services (19 TAC 89.223 (a)(4)(A)).
10. The IEP must include modifications needed for success in reg.,

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remedial, or supportive programs, if any (19 TAC 89.223(a)(4)(c)).

11. The IEP must include procedures and methods of behavior management and discipline to be used with the child, if needed (19 TAC 133.28 (5)).

12. Least restrictive environment means: child will remain in reg. ed. as long as implementing the child's IEP (including behavior management plan) does not prevent other students from learning (34 CFR 300.552, comment).

13. The SE Student will be removed from the regular education classroom only when his education with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR 300.550 (b) (2)).

Pamela Parker Knight, attorney with the Association of Texas Professional Educators, says:

'Satisfactorily' means the student has the same opportunity to be successful in learning as the non-handicapped student. Student's educational program may include modification of the environment (ex: an ED student whose plan calls for small group instruction), modification of the delivery system (ex: a VI student who receives books on tape), or modification of the educational goal itself (ex: a low-functioning MR student whose goal is to attain basic self-help skills). If the student is not successful in class (i.e., failing), the modifications should be examined to see if they adequately address the limitations imposed by the student's handicap. If they do, and the failure is determined to be due to other factors not related to the handicapping condition, then no further modification is required.

14. SE child will be educated to the maximum extent appropriate with reg. ed. students (19 TAC 89.218(b); 34 CFR 300.550 (b) (1)).

15. No-pass, no-play rule includes all students. Suspension from extra-curricular activities is based on failure to meet modified standards as given on IEP (TEC 21.920(b)(c)).

16. ARD must review IEP if child fails in a course for two consecutive 6 week periods (19 TAC 89.221(b)(11)).

17. SE child may be removed from classes and school for a few days or may be sent to AEC (19 TAC 133.28 (2)(3)).

18. If SE child hits teacher or another student or engages in serious or persistent misbehavior, he may be expelled (19 TAC 133.27, 133.28(6)).

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19. Before he can be expelled, the ARD committee must determine whether the misconduct was due to his handicapping condition or to an inappropriate placement (19 TAC 133.28 (2)(B)).

20. If content or mastery level of State Board approved courses is changed, student's transcript will have an "S" written on it. Providing extra time for testing or having an interpreter can be provided without indication of an "S" code.

21. Local credit courses will be marked on the transcript with both "S" and "L." (These courses are not on the State Board approved list).

22. The IEP must specify whether the SE student is exempt from taking all or some of the TAAS (19 TAC 101.3 (b)(c)(e), 89.223 (a)(4)(E)). The transcript will reflect whether the TAAS was taken.