

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

ONE: (916) 323-3562

FAX: (916) 445-0278

E-mail: csminfo@csm.ca.gov

EXHIBIT G

May 6, 2008

Mr. Keith Petersen
SixTen and Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Draft Staff Analysis and Hearing Date*Disabled Student Programs and Services, 02-TC-22*

Education Code Sections 67300, 67301, 67302, 67310, 67311, 67312, and 84850,

as added and amended by Statutes 1977, Chapter 36 et al.; and

California Code of Regulations, Title 5, Sections 54100, and 56000 et seq.

West Kern Community College District, Claimant

Dear Mr. Petersen:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Tuesday, **May 27, 2008**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, June 26, 2008**, at 9:30 a.m. in Room 126, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about June 13, 2008. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Katherine Tokarski at (916) 445-9429 with any questions regarding the above.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosures

ITEM _____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 67300, 67301, 67302, 67310, 67311, 67312, and 84850

Statutes 1977, Chapter 36 (SB 112)
Statutes 1978, Chapter 1403 (AB 2670)
Statutes 1979, Chapters 282 (AB 8) and 1035 (SB 186)
Statutes 1981, Chapter 796 (SB 1053)
Statutes 1982, Chapter 251 (AB 1729)
Statutes 1983, Chapter 323 (AB 223)
Statutes 1985, Chapter 903 (SB 1160)
Statutes 1986, Chapter 248 (SB 2451)
Statutes 1987, Chapters 829 (AB 746) and 998 (SB 252)
Statutes 1990, Chapters 1066 (AB 2625) and 1206 (AB 3929)
Statutes 1991, Chapter 626 (AB 1021)
Statutes 1992, Chapter 1243 (AB 3090)
Statutes 1995, Chapter 758 (AB 446)
Statutes 1999, Chapter 379 (AB 422)
Statutes 2001, Chapter 745 (SB 1191)

California Code of Regulations, Title 5, Sections 54100, 56000, 56002, 56004, 56005, 56006,
56008, 56010, 56020, 56022, 56026, 56027, 56028, 56029, 56030, 56032, 56034, 56036, 56038,
56040, 56042, 56044, 56046, 56048, 56050, 56052, 56054, 56060, 56062, 56064, 56066, 56068,
56070, 56072, 56074, 56076

(As Added or Amended by Register 76, No. 51, Register 77, Nos. 12 & 45,
Register 79, No. 46, Register 83, No. 18, Register 88, No. 16, Register 91, No. 31,
Register 92, No. 12, and Register 93, No. 6)

Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*,
Issued by the Chancellor's Office, California Community Colleges, January 2, 1997

Disabled Student Programs and Services
(02-TC-22)

West Kern Community College District, Claimant

EXECUTIVE SUMMARY

Background

The May 23, 2003 test claim filed by West Kern Community College District concerns the provision of services to disabled students within the California community college system. The test claim alleges that community college districts have incurred costs mandated by the state for the provision of disabled student services, including verifying a student's eligibility for support services, establishing a Student Educational Contract, and completing related accounting, budget and fiscal reports. There are also activities alleged for requesting instructional materials from publishers in an electronic format, and disabled student parking services.

The Department of Finance and the California Community Colleges Chancellor's Office dispute the test claim, asserting that the state requirements for Disabled Student Programs and Services (DSPS) are voluntary unless the claimant accepts significant program funds, which are then available to cover the claimed costs. Where the state acknowledges certain activities may be mandatory, the state asserts that they are otherwise required under federal law.

Staff finds that equal protection and related supportive services requirements for disabled students did not originate with state law, but rather with the United States Constitution, federal case law, and subsequent federal statutes and regulations. Current federal law requiring the provision of disabled student services by the California community colleges includes both the 1973 Rehabilitation Act, commonly referred to as Section 504, and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.).

Staff finds for the statutory and regulatory DSPS program there is an underlying federal mandate imposed directly on the community colleges, and the state has set up an optional program for the community colleges to receive additional funding to meet those requirements. The state's offer of financial assistance to community college districts to meet such requirements does not impose a state-mandated program.

Similarly, regarding claimed administrative activities for requesting instructional materials in an electronic format from publishers, staff finds that community colleges have a duty under federal law to timely provide instructional materials to disabled students in an accessible format. The 1999 test claim statute provides one method for the community colleges to fulfill this duty, but has not imposed a state-mandated program.

Regarding the statute and regulation on disabled student parking, accessible disabled parking is required by federal mandate. To the extent the claimant seeks mandate reimbursement for not being able to charge disabled students parking fines and meter fees, the *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, disallows claims for lost revenue.

Conclusion

Staff concludes that Education Code sections 67300, 67301, 67302, 67310, 67311, 67312, and 84850; California Code of Regulations, title 5, sections 54100, 56000, 56002, 56004, 56005, 56006, 56008, 56010, 56020, 56022, 56026, 56027, 56028, 56029, 56030, 56032, 56034, 56036, 56038, 56040, 56042, 56044, 56046, 56048, 56050, 56052, 56054, 56060, 56062, 56064, 56066, 56068, 56070, 56072, 56074, and 56076; and the "Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*," do not impose a state-mandated program on community college districts subject to article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to deny this test claim.

STAFF ANALYSIS

Claimant

West Kern Community College District

Chronology

05/23/03 Claimant files the test claim with the Commission on State Mandates (Commission)

06/20/03 Commission staff issues the completeness review letter and requests comments from state agencies

07/15/03 Department of Finance (DOF) requests an extension of time for filing comments for 120 days, to consult with the Office of the Attorney General

07/17/03 Commission staff grants an extension to September 3, 2003

08/07/03 DOF requests an extension of time to October 17, 2003

08/11/03 Commission staff grants the extension of time as requested

10/31/02 DOF requests an extension of time to file comments until February 7, 2004

11/07/03 Commission staff grants the extension of time as requested

02/18/04 DOF requests an extension of time to file initial comments to August 9, 2004

02/18/04 Commission staff grants the extension of time as requested

03/16/04 California Community Colleges Chancellor's Office (Chancellor's Office) files comments

04/05/04 Claimant files rebuttal to comments by Chancellor's Office

06/10/04 DOF requests an extension of time to file initial comments to August 9, 2005

06/14/04 Commission staff grants the extension of time as requested

09/09/04 DOF requests an extension of time to file initial comments to December 9, 2004

09/14/04 Commission staff grants the extension of time as requested

09/24/04 Department of Justice requests removal from test claim mailing list

12/24/04 DOF requests an extension of time to file initial comments to March 9, 2005

12/28/04 Commission staff grants the extension of time as requested

03/15/05 DOF requests an extension of time to file initial comments to June 9, 2005

03/17/05 Commission staff grants the extension of time as requested

09/21/05 DOF requests an extension of time to file initial comments to December 1, 2005

10/03/05 Commission staff grants the extension of time as requested

02/03/06 DOF requests an extension of time to file initial comments to March 1, 2006

02/07/06 Commission staff grants the extension of time as requested

- 10/30/07 Commission staff issues a request for comments on the test claim from the Department of Rehabilitation and DOF, due by November 20, 2007
- 11/05/07 Claimant submits a supplement to the test claim filing, with a history of the claimed regulations
- 12/06/07 DOF submits initial comments on the test claim filing
- 04/02/08 Commission severs two regulations (Cal. Code Regs., tit. 5, §§ 55522 and 55602.5) from the *DSPS* test claim, that are also pled in *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31)
- 04/28/08 Commission staff issues letter to claimant requesting an updated face sheet identifying which regulatory register numbers are pled in the test claim
- 05/02/08 Claimant submits amended facesheet
- 05/05/08 Commission staff issues the draft staff analysis on the test claim

Background

This test claim concerns the provision of services to disabled students within the California community colleges system. The test claim alleges that community college districts have incurred costs mandated by the state, due to the enactment or amendment of Education Code sections 67300, 67301, 67302, 67310, 67311, 67312, and 84850, and thirty-six related title 5 regulations,^{1,2} as well as the “Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*,” issued by the California Community Colleges Chancellor’s Office on January 2, 1997. The claimant alleges that the laws and claimed executive orders require community college districts to provide disabled student services activities, including verifying a student’s eligibility for support services, establishing a Student Educational Contract, and completing related accounting, budget and fiscal reports. There are also activities alleged for requesting instructional materials from publishers in an electronic format, and providing disabled student parking services.

Prior Law

Disabled student services were part of the Education Code and regulations for community colleges prior to the enactment of the test claim legislation.³ An uncodified statute was added by Statutes 1971, chapter 1619, establishing that the state shall annually apportion money to community college districts “for the purpose of funding the excess cost of providing special

¹ References to “title 5” are to the California Code of Regulations.

² The original test claim filing included mandate allegations for California Code of Regulations, title 5, sections 55522 and 55602.5 (Register 91, Nos. 23 & 43; Register 95, No. 22), regarding matriculation accommodations and contracting for disabled student vocational education, respectively. These regulations are also included in another pending test claim; therefore they were severed from *DSPS* and will be included in the Commission’s decision on *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31).

³ Former Education Code section 18151, and California Code of Regulations, title 5, section 56000 et seq. (Reg. 73, no. 44.)

facilities, special educational material, educational assistance, mobility assistance, and transportation for handicapped students.” This funding was limited to \$400 annually for each disabled student, age 21 or older, with demonstrated financial need. Statutes 1972, chapter 1123 repealed the earlier section, and substantially reenacted it as Education Code section 18151, with the added provision that before applying for an apportionment under this section, each community college district must certify “that it has made every reasonable effort to secure federal funds or other state funds for the purpose, and has been unable to secure sufficient funds.” Education Code section 18151 has since been amended, renumbered, and reenacted as Education Code section 84850, which is a statute pled in this test claim.

Test Claim Statutes, Regulations, and Guidelines

The requirement for the California Community Colleges Board of Governors to “provide for the apportionment of funds to each community college district to offset the direct excess cost of providing specialized support services or instruction, or both, to disabled students” is now found at Education Code section 84850, and is no longer limited in dollar amount, nor is it restricted by financial need or age of the student. Instead, it is part of a larger statutory and regulatory scheme which provides additional funding to community college districts who agree to provide disabled student services pursuant to state guidelines, including demonstrating accountability for the funding. Chapter 14, “Disabled Student Services,” was added to the Education Code by Statutes 1981, chapter 796, beginning with Education Code section 67300⁴ which states, in pertinent part:

Services for disabled students provided by the California Community Colleges ... shall ... at a minimum, conform to the level and quality of those services provided by the Department of Rehabilitation to its clients prior to July 1, 1981. However, nothing in this chapter requires the California Community Colleges ... to provide the services for disabled students in the same manner as those services were provided by the Department of Rehabilitation.⁵

An interagency agreement between the Chancellor’s Office and the California Department of Rehabilitation (DOR)⁶ is described in the legislative history of Statutes 1981, chapter 796, which first added section 67300 to the Education Code. The “Cooperative Agreement” was signed in June 1981, stating:⁷

[T]he Chancellor acknowledges and agrees that the community colleges are required by Section 504 of the Rehabilitation Act of 1973, and the regulations implementing that Section and Article 9.5 (11135 to 11135.5)⁸ of the California

⁴ Amended by Statutes 1985, chapter 903, Statutes 1986, chapter 248, Statutes 1987, chapter 998, Statutes 1991, chapter 626. Repealed and reenacted by Statutes 1995, chapter 758.

⁵ The omitted portions refer to California’s university systems.

⁶ The DOR’s primary function is to provide and refer individuals with disabilities to a variety of vocational rehabilitation and independent living services. (Welf. & Inst. Code, § 19000 et seq.)

⁷ See Attachment 1 to the Draft Staff Analysis.

⁸ Government Code section 11135 et seq., enacted by Statutes 1977, chapter 972, provides individuals with protection from discrimination on the basis of disability (as well as for other basis, including age, color, and sex), in any program or activity receiving state funding.

Government Code to provide auxiliary aids necessary to make the benefits of the community college programs fully accessible to all their disabled students;

The agreement continues:

Beginning July 1, 1981, the following auxiliary aids related to educational programs will no longer be provided by the Department of Rehabilitation:

1. Reader services for the blind and visually impaired.
2. Notetaker services for the blind and visually impaired.
3. Interpreter services for the deaf and hearing impaired.
4. On-campus mobility assistance.
5. On-campus transportation.
6. Special adaptive equipment.

Education Code section 67300, in contrast to the interagency agreement, now requires the DOR to provide all reader services to its blind students, even when solely for educational purposes.

Education Code section 67310 is a lengthy statement of legislative intent and principles to provide state funding to state colleges and universities, "to cover the actual cost of providing services and instruction" to disabled postsecondary students. Education Code section 67312 requires the California Community Colleges Board of Governors to adopt regulations "necessary to the operation of programs funded pursuant to this chapter."⁹ Those regulations are found at California Code of Regulations, title 5, section 56000 et seq.

Title 5, section 56000 expresses that compliance with the DSPS regulations is a condition of state DSPS funding: "Programs receiving funds allocated pursuant to Education Code section 84850 shall meet the requirements of this subchapter."¹⁰ The regulations require community college districts receiving DSPS funding to establish a DSPS advisory committee, to "meet not less than once per year," designate a DSPS Coordinator with "responsibility for the day-to-day operation of DSPS," and "employ reasonable means to inform all students and staff" about the availability of DSPS services.¹¹ Then, for students who qualify for DSPS services, the community college must identify a student's educational limitations and describe them in a Student Educational Contract (SEC), which is to be updated annually.¹² Such records are required to be protected from disclosure.¹³

Community college districts must give students a copy of any district policy on the termination or suspension of DSPS services for a student's failure to make measurable progress toward

⁹ Chapter 14 includes Education Code sections 67300 through 67313.

¹⁰ The Chancellor's Office issued the "Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*," on January 2, 1997, which provides the text of each DSPS regulation, followed by a restatement and a description of what type of documentation may demonstrate compliance with the regulation.

¹¹ California Code of Regulations, title 5, sections 56020, 56048, and 56050.

¹² California Code of Regulations, title 5, sections 56006 and 56022.

¹³ California Code of Regulations, title 5, section 56008.

educational goals, or other non-compliance with DSPTS policies.¹⁴ In addition, districts are required to establish policies and procedures for responding to student requests for academic accommodations and repetition of special classes.¹⁵

Community college districts must establish a program plan that “shall be a contract between the District and the Chancellor,” and comply with certifications, evaluations, and regular fiscal reporting to the Chancellor’s Office, pursuant to deadlines and format requirements.¹⁶

Community college districts shall also “cooperate to the maximum extent possible with the Chancellor in carrying out special projects,” such as research and training, using funding “from the three percent set aside authorized pursuant to Education Code Section 84850(e).”¹⁷

The types of expenses that can be covered by annual DSPTS funding, on a fixed-cost basis, include: adaptive educational equipment, materials, and supplies required by disabled students; job placement and development services; priority enrollment and registration assistance; specialized campus orientation; special parking arrangements; activities necessary to coordinate and administer specialized services and instruction; and DSPTS assessment activities.¹⁸

Community colleges can seek actual cost reimbursement for variable-cost items including: diagnostic assessment; on-campus mobility assistance and off-campus transportation assistance; disability-related counseling and advising; interpreter services for deaf and hard-of-hearing students; reader and notetaker services; specialized class instruction and tutoring; speech services; test taking facilitation; and transcription services.¹⁹ Community colleges can also receive funds for “one-time expenditures for the purchase of supplies or the repair of equipment, such as adapted educational materials and vehicles.”²⁰ These are expenses that will vary according to the nature of an individual student’s disabilities.

Finally, Education Code section 67301 (including former section 67311.5), and the implementing regulation at title 5, section 54100, describe the duty of community colleges to make special parking available for disabled students. Education Code section 67302 provides a method for public postsecondary institutions to acquire instructional materials from publishers in an electronic format, in order to ease the process of transcribing materials for disabled students into an accessible format, such as braille, audio, or digital text.

¹⁴ California Code of Regulations, title 5, section 56010.

¹⁵ California Code of Regulations, title 5, sections 56027 and 56029.

¹⁶ California Code of Regulations, title 5, section 56030, 56046, 56052, 56066, 56072, 56074 and 56076.

¹⁷ California Code of Regulations, title 5, section 56054.

¹⁸ Education Code section 67311 and California Code of Regulations, title 5, section 56026.

¹⁹ *Ibid.*

²⁰ *Ibid.*

Relevant Federal Law:

The California laws regarding supportive services and aids for disabled community college students are intertwined with federal law. The Rehabilitation Act of 1973 (29 U.S.C. § 794), often referred to as “Section 504,” is the original federal law found to require the provision of support services for disabled post-secondary students:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity.

“Program or activity,” as it pertains to the community colleges, is defined as “all of the operations of” ... “(2)(A) a college, university, or other postsecondary institution, or a public system of higher education.”²¹

According to the Congressional history discussed by the court in *Lloyd v. Regional Transp. Authority* (1977) 548 F.2d 1277, 1285, the federal Rehabilitation Act of 1973 was designed to extend the protections of the Civil Rights Act of 1964 to the handicapped:

“Where applicable, section 504 is intended to include a requirement of affirmative action as well as a prohibition against discrimination.” 4 U.S.Code Cong. & Admin.News, p. 6390 (1974).

The Committee continues by stating that Section 504’s similarity to Section 601 of the Civil Rights Act of 1964 was not accidental:

“Section 504 was patterned after, and is almost identical to, the antidiscrimination language of section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 (relating to race, color, or national origin), and section 901 of the Education Amendments of 1972, 42 U.S.C. 1683 (relating to sex). The section therefore constitutes the establishment of a broad government policy that programs receiving Federal financial assistance shall be operated without discrimination on the basis of handicap. It does not specifically require the issuance of regulations or expressly provide for enforcement procedures, but it is clearly mandatory in form, and such regulations and enforcement are intended.” (4 U.S.Code Cong. & Admin.News, p. 6390 (1974)).

After some delay, the Rehabilitation Act regulations were adopted in 1980.²² The regulations specify that program accessibility is inclusive of facility accessibility: “No qualified handicapped

²¹ 34 Code of Federal Regulations part 104.3.

²² *Cherry v. Mathews* (1976) 419 F.Supp. 922, 924: “Both draft and proposed regulations have already been issued by the Secretary. See 41 Fed.Reg. 20296 (May 17, 1976); id. at 29548 (July 16, 1976). FN2 The introduction and preambles to the regulations detail the complex, difficult problems involved in fashioning guidelines to prevent discrimination against handicapped individuals. Rather than establish a date by which final regulations must issue, the Court retains jurisdiction over this matter to assure that no further unreasonable delays affect the promulgation of regulations under § 504.”

person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies." (34 C.F.R. § 104.21.)

The federal regulations also include specific requirements for post-secondary education. First, "[q]ualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies." (34 C.F.R. § 104.21.) Further, academic requirements are to be modified "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." (34 C.F.R. § 104.44(a).) In addition, auxiliary aids are required to assist students, as necessary:

(1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature. (34 C.F.R. § 104.44(d).)

With the enactment of the Americans with Disabilities Act of 1990 (hereafter, "the ADA;" 42 U.S.C. § 12101 et seq.), Congress expanded the required accessibility and protections for disabled individuals in public service and private business, without regard to the receipt of federal funding.²³

Claimant's Position

West Kern Community College District's May 23, 2003²⁴ test claim filing, at pages 74 through 97, sets out a list of new activities, "A" through "Z," alleged to be required by the test claim statutes and executive orders. Claimant alleges that the state has required community college districts to adopt and implement procedures, and periodically update those procedures, pursuant to the test claim statutes and executive orders to offer support services and instruction to disabled students. Some examples of the claimant's specific allegations include: verifying that a student has a disability "which results in an educational limitation;" categorize a student's disability using the definitions in title 5, sections 56032, 56034, 56036, 56038, 56040, 56042,

²³ In *Zukle v. Regents of University of California* (1999) 166 F.3d 1041, 1045, at footnote 11, the 9th circuit found "There is no significant difference in analysis of the rights and obligations created by the ADA and the Rehabilitation Act. See 42 U.S.C. § 12133 ("The remedies, procedures, and rights set forth in [the Rehabilitation Act] shall be the remedies, procedures, and rights [applicable to ADA claims].")"

²⁴ The potential reimbursement period begins no earlier than July 1, 2001, based upon the filing date for this test claim. (Gov. Code, § 17557.)

and 56044; identify and describe any educational limitations, along with a plan to meet the student's educational needs, in a "Student Education Contract," and review and update each contract annually.²⁵

The claimant also alleges that title 5, section 56020 requires districts to "employ reasonable means to inform all students about the support services or instruction available through the DSPS program." Claimant states that the required support services includes providing adaptive educational equipment, material and supplies; employment development; priority registration; special parking; supplemental orientation; test taking facilitation; special assessments and counseling; interpreter, reader, note-taker, transcription, tutor, and mobility assistance.²⁶

Further, the test claim alleges that community college districts are required to "provide special classes designed to address the educational limitations of students with disabilities who would not be able to substantially benefit from regular college classes, even with appropriate support services and accommodations."²⁷

The claim contends that the test claim statutes and executive orders require the development of policies for suspension and termination from the DSPS program; recordkeeping requirements for DSPS student files; the designation of a qualified DSPS Coordinator for each college; formation of a DSPS advisory committee; developing and updating "specialized accounting procedures" for calculating the direct and indirect costs of DSPS services; and "to determine and certify that reasonable efforts have been made to utilize all funds from federal, state and local sources available for serving students with disabilities."²⁸

The test claim also alleges new activities for disabled student parking services and requesting instructional materials from publishers in an electronic format.

The claimant acknowledges that some apportionment funding (Ed. Code, § 84850, subd. (c)), funds for special classes (Cal. Code Regs., tit. 5, § 56028), and parking fees (Ed. Code, § 67301) may be available to "reduce the costs incurred by these mandated duties."²⁹

The claimant rebutted the Chancellor's Office comments on the test claim filing in a letter dated April 1, 2004. The claimant's substantive arguments will be addressed in the analysis below.³⁰

²⁵ Test Claim Filing, pages 74-81.

²⁶ *Id.* at pages 81-85.

²⁷ Test Claim Filing, page 86.

²⁸ *Id.* at pages 87-96.

²⁹ *Id.* at page 98.

³⁰ In the April 1, 2004 rebuttal, the claimant argues that the Chancellor's Office comments are "incompetent" and should be stricken from the record since they do not comply with the Commission's regulations (Cal. Code Regs., tit. 2, § 1183.02.) That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief, and that any assertions of fact are to be supported by documentary evidence. The claimant contends that "the comments of [the Chancellor's Office] do not comply with these essential requirements."

California Community Colleges Chancellor's Office Position

The comments on the test claim filing, received March 16, 2004, from the Chancellor's Office dispute much of the test claim allegations. Regarding DSPS, the Chancellor's Office argues that Education Code sections 67310, 67311, 67312, and 84850, and the California Code of Regulations, title 5, sections 56000 through 56076, either do not expressly require activities of the community college districts, or are optional unless the districts seek state funds:

for the direct excess costs of providing certain services or instruction to students with disabilities. Under federal law, districts are required to provide accommodations for students with disabilities by section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, but nothing compels a district to apply for DSPS funds or claim reimbursement from the state for services it does provide.³¹

On Education Code section 67302, regarding the requirement for publishers to provide electronic versions of instructional materials for use by disabled students, the Chancellor's Office asserts that the statute does not impose mandatory duties on the colleges to request the materials from the publishers. However, "to the extent that colleges do call upon publishers to provide the electronic texts, the statute creates a potential savings to districts since federal law requires districts to provide students with visual impairments access to print and computer-based information."

Regarding disabled student parking accessibility pursuant to Education Code section 67301, and title 5, section 54100, the Chancellor's Office asserts that Government Code section 17556, subdivisions (d) and (e) may preclude the Commission from finding of costs mandated by the state because the districts are authorized to use their other parking fees to offset the costs.

Department of Finance's Position

On December 6, 2007, DOF submitted substantive comments on the test claim filing. DOF states: "Based on our review of the claim, as well as relevant statutes and regulations, we do not believe that the procedures, definitions, and general instruction provided in the DSPS program constitute a reimbursable state mandated activity on local community college districts." Further, DOF states agreement with the analysis in the Chancellor's Office letter of March 11, 2004, and bases this "on the fact that DSPS activities are already fully funded in the budget and that DSPS is a voluntary program."

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied upon by staff at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The state agency responses contain comments on whether the Commission should approve this test claim and are, therefore, not stricken from the administrative record.

³¹ Chancellor's Office Comments on the Test Claim, dated March 11, 2004, page 5.

DOF states:

Funding for this program is now part of the annual appropriation for DSPS in Schedule (5) of Item 6870-101-0001 of the Budget Act. Since 2003, the year in which this test claim was filed, budgeted support for this program has been provided as follows: \$115,001,000 in the Budget Act of 2007, \$107,870,000 in the Budget Act of 2006, \$91,191,000 in the Budget Act of 2005, \$85,977,000 in the Budget Act of 2004, and \$82,583,000 in the Budget Act of 2003. This represents a significant and ongoing commitment by the state of California to fund specific activities and costs associated with participation in the DSPS program.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution³² recognizes the state constitutional restrictions on the powers of local government to tax and spend.³³ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”³⁴ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.³⁵ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.³⁶

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.³⁷ To determine if the

³² Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

³³ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

³⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

³⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

³⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

³⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*,

program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.³⁸ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”³⁹ Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁴⁰

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁴¹ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁴²

Issue 1: Do the test claim statutes or alleged executive orders impose a state-mandated program on community college districts subject to article XIII B, section 6 of the California Constitution?

A test claim statute or executive order imposes a state-mandated program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by school districts.⁴³ Thus, in order for a test claim statute or executive order to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that school districts perform an activity or task.

The test claim allegations will be analyzed by areas of activities, as follows: A) providing “Disabled Student Programs and Services;” B) requesting instructional materials in an electronic format; and C) parking services for students with disabilities.

44 Cal.3d 830, 835.)

³⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

³⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

⁴⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

⁴¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

⁴² *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁴³ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

A. Providing “Disabled Student Programs and Services (DSPS)”

The claimant alleges that Education Code sections 67300,⁴⁴ 67310,⁴⁵ 67311,⁴⁶ 67312,⁴⁷ and 84850,⁴⁸ impose a reimbursable state-mandated program. The claimant further alleges that California Code of Regulations, title 5, sections 56000 et seq., and the Chancellor’s Office DSPS “Implementing Guidelines for Title 5 Regulations” are executive orders which impose a reimbursable state mandated program on community college districts. The new activities alleged relate to the provision of disabled student services, such as: verifying a student’s eligibility for support services; establishing a Student Educational Contract to identify and provide for needed auxiliary aids and educational facilitation; as well as for DSPS-related accounting, budget and fiscal reporting activities.

As described below, staff finds that an underlying federal mandate is imposed directly on community college districts to provide support services to disabled students pursuant to the Rehabilitation Act of 1973 and the ADA. The state has set up an optional program for community colleges to receive excess funding to meet those requirements. Although some activities are required of community colleges who receive DSPS funding, staff finds that the California Supreme Court’s decision in *Kern High School Dist.*, *supra*, supports the conclusion that the state DSPS activities alleged are voluntary unless a community college district accepts state program funds, and therefore do not impose a state mandated program. These issues are discussed below.

Federal law mandates community college districts to provide support services to disabled students:

Education Code section 67300, states that services for disabled community college students shall “at a minimum, conform to the level and quality of those services provided by the Department of Rehabilitation to its clients prior to July 1, 1981. However, nothing in this chapter requires the California Community Colleges ... to provide the services for disabled students in the same manner as those services were provided by the Department of Rehabilitation.” The section also provides that “blind students who are attending California Community Colleges under the sponsorship of the Department of Rehabilitation shall have all reader services provided directly by the” DOR.

⁴⁴ Added by Statutes 1981, chapter 796, amended by Statutes 1985, chapter 903, Statutes 1986, chapter 248, Statutes 1987, chapter 998, Statutes 1991, chapter 626. Repealed and reenacted by Statutes 1995, chapter 758.

⁴⁵ Repealed and reenacted by Statutes 1995, chapter 758; derived from Statutes 1987, chapter 829.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.* A minor amendment by Statutes 2004, chapter 303 was not pled and does not impact the test claim analysis.

⁴⁸ Statutes 1990, chapter 1206 repealed and replaced this section; earlier versions also concerned special funding for services and assistance to disabled students. Derived from former Education Code section 18151, as added by Statutes 1972, chapter 1123.

Education Code section 67300 was adopted subsequent to a June 1981 “Cooperative Agreement” signed by the Chancellor’s Office and the DOR.⁴⁹ The DOR was established in the 1960s to administer vocational rehabilitation programs to disabled persons with financial need, and to access related federal funding.⁵⁰ Some clients of the DOR receive vocational education through the public postsecondary education system,⁵¹ while community colleges have long had a mission to serve both postsecondary academic and vocational education purposes.⁵² Because of the overlap and historical cooperation of the systems, following the adoption of the federal Rehabilitation Act regulations the DOR and the Chancellor’s Office signed an interagency “Cooperative Agreement” in June 1981, stating:⁵³

[T]he Chancellor acknowledges and agrees that the community colleges are required by Section 504 of the Rehabilitation Act of 1973, and the regulations implementing that Section and Article 9.5 (11135 to 11135.5)⁵⁴ of the California Government Code to provide auxiliary aids necessary to make the benefits of the community college programs fully accessible to all their disabled students;

The agreement continues:

Beginning July 1, 1981, the following auxiliary aids related to educational programs will no longer be provided by the Department of Rehabilitation:

1. Reader services for the blind and visually impaired.
2. Notetaker services for the blind and visually impaired.
3. Interpreter services for the deaf and hearing impaired.
4. On-campus mobility assistance.
5. On-campus transportation.
6. Special adaptive equipment.

⁴⁹ According to the legislative history for section 67300: “An interagency agreement between the [DOR] and postsecondary education institutions ... provides for a transfer of funding and management of auxiliary services, including readers for the blind, from the [DOR] to these postsecondary education systems. The [DOR] cites federal law and state law to justify the responsibility of public postsecondary institutions to provide auxiliary educational services to handicapped students. However, organizations representing the blind ... prefer to have the reader services remain with [DOR].” (Sen. Republican Caucus, analysis of Sen. Bill No. 1053 (1981-1982 Reg. Sess.), as amended Jul. 7, 1981, p. 2.) See Attachment 2.

⁵⁰ Welfare and Institutions Code section 19000 et seq. as enacted by Statutes 1969, chapter 1107, includes references to earlier federal funding for vocational rehabilitation for workers disabled on the job.

⁵¹ Welfare and Institutions Code section 19013.

⁵² Former Education Code section 66701 and current Education Code section 66010.4.

⁵³ See Attachment 1 to the Draft Staff Analysis.

⁵⁴ Government Code section 11135 et seq., enacted by Statutes 1977, chapter 972, provides individuals with protection from discrimination on the basis of disability (as well as for other basis, including age, color, and sex), in any program or activity receiving state funding.

The agreement also provides a list of “traditional services” that will continue to be provided by the DOR to its “student/clients including but not limited to” disability evaluation, therapy, individual diagnostic testing, off-campus transportation, reader or interpreter services for the blind or hearing impaired “other than for educational programs,” job placement services, special adaptive equipment when not “useable solely for educational purposes,” and individual tutoring when college services are insufficient. This interagency agreement is described in the legislative history of Statutes 1981, chapter 796, which first added section 67300 to the Education Code. Education Code section 67300, in contrast to the interagency agreement, now requires the DOR to provide reader services to blind students, even when solely for educational purposes.

Education Code section 67310 is a lengthy statement of legislative intent and principles to provide state funding to state colleges and universities, “to cover the actual cost of providing services and instruction” to disabled postsecondary students. Education Code section 67311 lists the DSPS cost categories and expenses the Legislature intends to fund, including such items as diagnostic assessment; on-campus mobility assistance and off-campus transportation assistance; disability-related counseling and advising; interpreter services for deaf and hard-of-hearing students; reader and notetaker services; specialized class instruction and tutoring; speech services; test taking facilitation; and transcription services. Community colleges can also receive funds for “one-time expenditures for the purchase of supplies or the repair of equipment, such as adapted educational materials and vehicles.”

Education Code section 67312 requires the California Community Colleges Board of Governors to adopt regulations “necessary to the operation of programs funded pursuant to this chapter.”⁵⁵ Education Code section 84850 also requires the Board of Governors to adopt regulations regarding the “administration and funding of educational programs and support services” for disabled students. Those regulations are found at California Code of Regulations, title 5, section 56000 et seq.

The claimant argues that *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830 supports a finding that a program has been shifted from the state to local community colleges districts, resulting in a reimbursable state-mandated program.⁵⁶ In *Lucia Mar, supra*, K-12 school districts sought mandate reimbursement after the state required contributions for the education of severely handicapped students at state schools. The Court concluded, *supra*, at page 836, “that because section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts – an obligation the school districts did not have at the time article XIII B was adopted – it calls for plaintiffs to support a “new program” within the meaning of section 6.”

There are important factual distinctions between the present test claim and *Lucia Mar*. First, the state is not newly charging community college districts for services provided by the state. Here, the DOR withdrew the provision of most educational auxiliary aids to postsecondary-student

⁵⁵ Chapter 14 includes Education Code sections 67300 through 67313.

⁵⁶ Claimant’s April 5, 2004 Rebuttal to Comments, page 13, states that “The [DOR] is a state agency. Therefore, because Education Code Section 67300 shifts financial responsibility for the education of disabled students from this state agency to community college districts, it calls for those districts to support a “new program” within the meaning of section 6.”

clients. However, community college districts had an existing obligation pursuant to federal law to provide the auxiliary aids necessary to accommodate all enrolled disabled students, regardless of whether the student was also a client of the DOR.⁵⁷ Community colleges have long had postsecondary and vocational education as their primary mission. Former Education Code section 66701⁵⁸ defined the scope of instruction for California community colleges as “standard collegiate courses for transfer to other institutions; vocational and technical fields leading to employment; general or liberal arts courses; and community services.” Education Code section 66010.4 now restates that the “primary mission” of community colleges is “academic and vocational instruction at the lower division level.”⁵⁹ Because community college districts have a preexisting and continuing duty under the Rehabilitation Act of 1973 and the ADA to provide needed auxiliary aids and services to all disabled students, as detailed below, the state did not shift a program to community college districts, and *Lucia Mar* does not apply.

Under federal law, any services offered by a community college, including postsecondary and vocational education, must be made accessible to qualified disabled individuals.⁶⁰ The Rehabilitation Act of 1973 requires that recipients of federal funds provide “program accessibility” by making the recipient’s facilities physically accessible to disabled persons. “A recipient may comply with the requirements ... through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries ... alterations of existing facilities and construction of new facilities [which meet accessibility standards], or any other methods that result in making its program or activity accessible to handicapped persons.”⁶¹

Subpart E of the Rehabilitation Act regulations apply specifically to postsecondary education. Part 104.42 requires nondiscrimination on the basis of disability in admission or recruitment. Part 104.43 requires nondiscrimination on the basis of disability for all “academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services.”

⁵⁷ See 34 Code of Federal Regulations part 104.44. In *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1584, the court found: “Since federal assistance to education is pervasive (see, e.g. Ed. Code, §§ 12000-12405; 49540 et seq., 92140 et seq.), section 504 [Rehabilitation Act] was applicable to virtually all public educational programs in this and other states.” In 1990, the ADA imposed the same requirements on all public entities, regardless of funding. (42 U.S.C. § 12131 et seq.; 28 C.F.R. § 35.101 et seq.)

⁵⁸ Last substantive amendment by Statutes 1974, chapter 921; renumbered by Statutes 1976, chapter 1010.

⁵⁹ Statutes 1990, chapter 1597 repealed section 66701, and reenacted its substantive provisions in Education Code section 66010.4.

⁶⁰ 29 United States Code section 794 requires non-discrimination by reason of disability in all postsecondary and vocational education programs receiving any federal funds. Also, 34 Federal Code of Regulations part 104.44 requires the provision of auxiliary aids for disabled postsecondary students.

⁶¹ 34 Code of Federal Regulations part 104.22(b).

Part 104.44 requires that community colleges complying with the federal Rehabilitation Act “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,” including modification of the length of time allowed to complete degree requirements, and the substitution of course requirements.⁶²

In addition, a postsecondary institution “shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.”⁶³ Under the Rehabilitation Act regulations, such “[a]uxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.”⁶⁴ 34 Code of Federal Regulations part 104.4(b) specifies that federal funding recipients may not “provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others.”

With the 1990 adoption of the ADA (which applies to all public entities, regardless of the receipt of federal funding), regulations were developed which repeat many of the non-discrimination and accessibility requirements of the 1973 Rehabilitation Act, but often go further. For example, 28 Code of Federal Regulations part 35.160(b) requires that “a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity ... giving primary consideration to the requests of the individual with disabilities.”⁶⁵

⁶² 34 Code of Federal Regulations part 104.44(a).

⁶³ 34 Code of Federal Regulations part 104.44(d).

⁶⁴ *Ibid.*

⁶⁵ Auxiliary aids and services is defined in the ADA to include:

- (1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- (2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions. (28 C.F.R. part 35.104.)

An opinion document from the United States Department of Education, Office of Civil Rights, or OCR, on auxiliary aids and services for disabled students, while not controlling, is informative.⁶⁶ The requirements of the Rehabilitation Act and the ADA are enforced at public colleges and universities through the OCR.⁶⁷ The OCR published a letter, revised September 1998, regarding the duties of postsecondary institutions to provide auxiliary aids, stating “[a]n institution may not limit what it spends for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its provision of auxiliary aids on availability of funds. In many cases, an institution may meet its obligation to provide auxiliary aids by assisting the student in obtaining the aid or obtaining reimbursement for the cost of an aid from an outside agency or organization, such as a state rehabilitation agency or a private charitable organization. However, the institution remains responsible for providing the aid.”⁶⁸

Thus, in the absence of the test claim legislation, community colleges still have to meet all of the federal law equal access requirements of the ADA required directly of all public agencies, and for those districts receiving any form of federal funding, the Rehabilitation Act of 1973. In *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, the claimant argued that a reimbursable state-mandated program was imposed by a Penal Code provision requiring criminal indigent defense services and other procedural protections in capital murder cases. However, the court clearly found “no state mandate exists if the requirement or provisions of a state statute are, nevertheless, required by federal law.”⁶⁹

Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564 further supports the conclusion that the state has not imposed a state-mandated program for the provision of support services to disabled students by community colleges. The *Hayes* case concerned a mandate claim for special education costs for K-12 schools, ultimately focusing on the federal Education of the Handicapped Act. The proper holding from *Hayes* is that:

When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies’ taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no “true choice” in the manner of implementation of the federal mandate. (See *City of*

⁶⁶ In *Cohen v. Brown University* (C.A.1 (R.I.) 1996) 101 F.3d 155, 173, regarding the degree of judicial deference given to the OCR’s Policy Interpretation of federal Title IX law, the court found: “It is also well established ‘that an agency’s construction of its own regulations is entitled to substantial deference.’”

⁶⁷ In interpreting regulations under the ADA and Rehabilitation Act, the court recognizes that the OCR is “the federal agency responsible for investigating complaints of disability discrimination.” *Guckenberger v. Boston University* (D.Mass. 1997) 974 F.Supp. 106, 145.

⁶⁸ See <<http://www.ed.gov/print/about/offices/list/ocr/docs/auxaids.html>>, as of March 5, 2008. Attachment 3 to the Draft Staff Analysis.

⁶⁹ *County of Los Angeles, supra*, 32 Cal.App.4th 805, 816.

Sacramento v. State of California, supra, 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.)⁷⁰

Thus, community colleges are responsible for providing necessary auxiliary aids and services for all of their disabled students, in order to achieve program accessibility required by federal law; therefore the costs are imposed on local districts by federal mandate, consistent with the court's opinion in *Hayes, supra*, 11 Cal.App.4th 1564, 1595.

The state has enacted an optional program for the community colleges to receive excess funding:

Because some test claim activities, not otherwise required by federal law, are required of recipients of state DSPS funding, the analysis must continue. As described in the background above, DSPS funding is available to community college districts "to offset the direct excess cost of providing specialized support services or instruction" to disabled students.⁷¹ The test claim statutes and regulations require community college districts receiving DSPS funding to engage in activities such as establishing a DSPS advisory committee, maintaining a designated DSPS Coordinator, and informing students and staff about the availability of DSPS services.⁷² Then, for students who qualify for DSPS services, the community college must identify a student's educational limitations and describe them in a Student Educational Contract, which is to be updated annually.⁷³ Community college districts must also establish and/or distribute certain policies and procedures regarding DSPS participation and rules.⁷⁴

In addition, a contractual DSPS program plan must be established between the district and the Chancellor, and districts must comply with funding accountability requirements including certifications, evaluations, and regular fiscal reporting to the Chancellor's Office, pursuant to deadlines and format requirements.⁷⁵ Community college districts are also to "cooperate to the maximum extent possible with the Chancellor in carrying out special projects," such as research and training, using funding "from the three percent set aside authorized pursuant to Education Code Section 84850(e)."⁷⁶

The Chancellor's Office also issued the "Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*," on January 2, 1997, which is pled in the test claim as an executive order. The document provides each DSPS regulation, followed by a restatement and a description of what type of documentation may demonstrate compliance with the

⁷⁰ *Hayes, supra*, 11 Cal.App.4th 1564, 1593.

⁷¹ Government Code section 84850, subdivision (c). Direct excess costs are defined as costs which exceed: the average cost of providing services to nondisabled students; the indirect cost of administration and facilities for DSPS; "the revenue derived from average daily attendance in special classes;" and any other federal, state or local funds received for serving disabled students.

⁷² California Code of Regulations, title 5, sections 56020, 56048, and 56050.

⁷³ California Code of Regulations, title 5, sections 56006 and 56022.

⁷⁴ California Code of Regulations, title 5, sections 56010, 56027 and 56029.

⁷⁵ Education Code section 67310, subdivision (e) and (f); California Code of Regulations, title 5, section 56030, 56046, 56052, 56066, 56072, 56074 and 56076.

⁷⁶ California Code of Regulations, title 5, section 56054.

regulation. The first page of the Guidelines states: "It is important to note that the Guidelines are not regulations which have gone through the full regulatory approval process. *College staff are encouraged, but not required, to use the Guidelines in administering the DSPS programs.* It is the responsibility of the colleges to establish programs, policies, and procedures which meet the requirements of these and other relevant statutes and regulations." [Emphasis added.] Government Code section 17516 defines an "executive order" as "any order, plan, requirement, rule, or regulation issued by . . . any agency, department, board, or commission of state government." Staff finds that the "Implementing Guidelines" are not an executive order because they impose no requirements based on the definition in Government Code section 17516.

Staff finds that the California Supreme Court's decision in *Kern High School Dist., supra*, supports the conclusion that the state DSPS activities alleged are voluntary unless a community college district accepts state program funds, and therefore do not impose a state-mandated program. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings. The Court rejected the "claimants' assertion that merely because they participate in one or more of the various education-related funded programs here at issue, the costs they incurred in complying with program conditions have been legally compelled and hence constitute reimbursable state mandates. We instead agree with the Department of Finance, and with *City of Merced, supra*, 153 Cal.App.3d 777, that the proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs themselves."⁷⁷ The court held that if a school district elects to participate in or continue to participate in any underlying voluntary funded program, the district's obligation to comply with the downstream notice and agenda requirements does not constitute a reimbursable state-mandated program.⁷⁸

The plain language of Education Code section 84850 and California Code of Regulations, title 5, section 56000 express that compliance with the DSPS rules and regulations is as a condition of receiving state DSPS funding. Education Code section 84850, subdivision (d) states: "*As a condition of receiving funds pursuant to this section, each community college district shall certify that reasonable efforts have been made to utilize all funds from federal, state, or local sources which are available for serving disabled students. Districts shall also provide the programmatic and fiscal information concerning programs and services for disabled students that the regulations of the board of governors require.*" Similarly, title 5, section 56000 provides: "This subchapter applies to community college districts offering support services, or instruction through Disabled Student Programs and Services (DSPS), on and/or off campus, to students with disabilities pursuant to Education Code sections 67310-12 and 84850. *Programs receiving funds allocated pursuant to Education Code Section 84850 shall meet the requirements of this subchapter.*"

To further demonstrate the voluntary nature of community college district participation in the DSPS program, the Chancellor's Office issued a short document titled "*Commonly Asked*

⁷⁷ *Kern High School Dist., supra*, 30 Cal.4th 727, 743.

⁷⁸ *Id.* at page 747.

*Questions About "Mandated" vs "Non-Mandated" DSP&S Services (Revised July, 2003)*⁷⁹ discussing the DSPS regulatory scheme. The California Supreme Court acknowledged that although the interpretation of regulations is a question of law, it "will give great weight to an administrative agency's interpretation of its own regulations and the statutes under which it operates."⁸⁰ Therefore, this document is valuable as an interpretation of the regulations issued by the Chancellor's Office.

Q. What DSP&S services are colleges mandated to provide?

A. Because of the nature of serving students with disabilities there is no specific list of mandated versus non-mandated services.

Technically, no "DSP&S" services are required, because participation in DSP&S is voluntary on the part of each college. Colleges are governed by the Title 5 regulations regarding DSP&S only because they accept the DSP&S funds allocated to them every year. A college could refuse the DSP&S funds and not be subject to the requirements of Title 5 regarding DSP&S. [Emphasis added.]

However, colleges are still subject to state and federal law regarding the civil rights of people with disabilities to be served in a non-discriminatory manner. State Government Code sections 11135-11139.5, Section 504 of the federal Rehabilitation Act and the federal [ADA] all guarantee equal access to people with disabilities, and community colleges are subject to all of those laws.

Given all of that, the answer of what is "mandated" always depends on the disability-related educational limitation(s) of each individual student. You can never say that any specific type of service or accommodation is always "mandated", because there are some students with disabilities who won't need those services in order to receive equal access to the instruction, information, or programs offered by the college.

The claimant argues that even if the requirements of the DSPS program are optional, "[a] finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate."⁸¹ The claimant describes *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 as the controlling case law, and states that the California Supreme Court's 2003 decision in *Kern High School Dist.*, *supra*, 30 Cal.4th 727 did not change the standard for finding practical compulsion.

In *Kern*, the claimants similarly argued that the California Supreme Court should apply its analysis in *City of Sacramento* regarding federal mandates in a way to find practical compulsion for otherwise optional state programs requiring school site councils. However, the Court in *Kern* examined its earlier decision in *City of Sacramento*, and rejected the claimants' argument, as follows:

Claimants contend that even if they have not been legally compelled to participate in most of the programs listed in Education Code section 35147, subdivision (b),

⁷⁹ See Attachment 4 to the Draft Staff Analysis.

⁸⁰ *Robinson v. Fair Employment & Housing Com.* (1992) 2 Cal.4th 226, 235.

⁸¹ Claimant's Rebuttal to Comments, received April 5, 2004, page 8.

and hence have not been legally required to incur the related notice and agenda costs, they nevertheless have been compelled as a practical matter to participate in those programs and hence to incur such costs. Claimants assert that school districts have “had no true option or choice but to participate in these [underlying education-related] programs. *This absence of a reasonable alternative to participation is a de facto mandate.*” As explained below, on the facts of this case, we disagree.

Claimants and amici curiae supporting them, relying upon this court’s broad interpretation of the federal mandate provision of article XIII B, section 9, [footnote omitted] in *City of Sacramento, supra*, 50 Cal.3d 51, 70-76, assert that we should recognize and endorse such a broader construction of section 6 of that article—a construction that does not limit the definition of a reimbursable state mandate to circumstances of *legal* compulsion.⁸²

The *Kern* Court explains that the parties disagree as to whether “federal mandate” and “state mandate” should be subject to the same interpretation, but concludes, *supra*, at page 751:

We find it unnecessary to resolve whether our reasoning in *City of Sacramento, supra*, 50 Cal.3d 51, applies with regard to the proper interpretation of the term “state mandate” in section 6 of article XIII B. Even assuming, for purposes of analysis only, that our construction of the term “federal mandate” in *City of Sacramento, supra*, 50 Cal.3d 51, applies equally in the context of article XIII [B], section 6, for reasons set out below we conclude that, contrary to the situation we described in that case, claimants here have not faced “certain and severe ... penalties” such as “double ... taxation” and other “draconian” consequences (*City of Sacramento, supra*, 50 Cal.3d at p. 74), and hence have not been “mandated,” under article XIII [B], section 6, to incur increased costs.

Staff disagrees with claimant’s contention that in the present test claim “community college districts’ participation is not truly voluntary, the carrot is too large and the stick is too short.”⁸³ Instead, staff finds that the factors for finding practical compulsion are not present here. The state provides annual funding for community college districts, in excess of any other available student funding, for use in meeting federal law requirements of providing disabled students equal access to education.⁸⁴ The state has imposed some regulatory requirements upon districts receiving DSPS funds. The incentive, or “carrot,” for community colleges to comply with the regulatory requirements of the DSPS program is the availability of significant funding to cover the costs of providing educational services to disabled students; the only consequence is the removal of the funds. There are no other penalties imposed by the state, such as double taxation, or the removal of other, unrelated funding sources. Like the Court in *Kern*, staff finds that a

⁸² *Kern High School Dist., supra*, 30 Cal.4th 727, at pages 748-749.

⁸³ Rebuttal to Comments, received April 5, 2004, page 12.

⁸⁴ DOF, in its December 5, 2007 letter, describes an annual appropriation for DSPS in the budget at Item 6870-1010-0001, Schedule 5, as follows (rounded): \$82.6 million (Budget Act of 2003); \$86 million (2004); \$91.2 million (2005); \$107.9 million (2006); \$115 million (2007).

“district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits.”⁸⁵

Staff finds that there is an underlying federal mandate imposed directly on the community college district itself to provide support services to disabled students, and the state has set up an optional program for the community colleges to receive excess funding to meet those requirements. The state’s offer of financial assistance to community college districts to meet such requirements does not impose a state-mandated program. Therefore, staff finds that Education Code section 67300, 67310, 67311, 67312 and 84850; California Code of Regulations, title 5, section 56000 et seq.; and the Chancellor’s Office “Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*,” issued January 2, 1997, do not impose a state-mandated program on community college districts.

B) Requesting Instructional Materials in an Electronic Format

Education Code Section 67302:

The claimant alleges that Education Code section 67302 imposes a reimbursable state-mandated program by requiring community colleges “When seeking printed instructional materials in an electronic format, to provide to the publisher or manufacturer a written request” meeting the statutory certification requirements; to copy protect disks or electronic files when being used directly by a student; and to submit requests for materials through a statewide processing center, if one is established by the Chancellor’s Office.⁸⁶

Education Code section 67302, as added by Statutes 1999, chapter 379 (AB 422) provides a statutory method for California public colleges and universities to acquire instructional materials from a publisher in an electronic format in order to meet federal accessibility requirements for students with disabilities, such as easier transcription to braille, audio, or digital text. Subdivision (a) requires publishers of printed instructional materials to provide such materials in an electronic format “at no additional cost and in a timely manner” upon receipt of a written request from a community college that certifies the following:

1. the college or student has purchased the printed instructional material for use by a student;
2. the student has a disability that prevents him or her from using standard instructional materials;
3. the materials are for use by the student in connection with a course he or she is registered or enrolled in; and
4. is signed by the community college DSPS coordinator, or another campus official responsible for monitoring ADA compliance.

Pursuant to Education Code section 67302, subdivision (b), a publisher may also require that the request include a signed statement by the student agreeing that the electronic materials will be used for “his or her own educational purposes” and that the student “will not copy or duplicate the printed instructional material for use by others.” Subdivision (c) provides that if a college

⁸⁵ *Kern High School Dist., supra*, 30 Cal.4th 727, 753.

⁸⁶ Test Claim Filing, pages 84-85.

allows a student to use an electronic version of instructional materials directly, the college is required to take reasonable precautions, such as copy-protecting the file, to prevent students from violating the federal Copyright Revision Act, by further distributing the material.

Education Code section 67302, subdivision (d) requires publishers to provide “nonprinted instructional materials,” such as software programs and videos, under the same conditions as printed materials, “when technology is available to convert these materials” from another format compatible with braille or speech synthesis software. Subdivision (e) provides definitions of terms, such as “instructional material” and “specialized format.” Subdivision (f) explicitly provides the right for colleges and universities to use the electronic instructional materials to transcribe the materials into braille, and to share the braille copy with other disabled students.

Education Code section 67302, subdivision (g) provides that if the Chancellor’s Office establishes a statewide or regional center for processing such requests “(1) The colleges or campuses designated as within the jurisdiction of a center shall submit requests for instructional material ... to the center, which shall transmit the request to the publisher or manufacturer.” Subdivision (h) provides that the statute does not authorize the use of any materials in violation of the federal Copyright Revision Act.

Education Code section 67302, subdivision (i) requires the governing board of the California Community Colleges to adopt guidelines for the implementation of the statute. Finally, subdivision (j) provides that “Failure to comply with the requirements of this section shall be a violation of Section 54.1 of the Civil Code.” Civil Code section 54.1 is the California version of the ADA, requiring that disabled persons be granted full and equal access to transportation, facilities open to the general public, and housing.

The Chancellor’s Office published “Guidelines for Producing Instructional and Other Printed Materials in Alternate Media for Persons with Disabilities” in April 2000 [hereafter “Alternate Media Guidelines”]. According to the preface, although the document was originally developed in response to the federal Office of Civil Rights (OCR) review, Part II of the Alternate Media Guidelines “addresses the procedures to be used by colleges in taking advantage of the option provided by AB 422 to obtain electronic text from publishers.”⁸⁷ The appendix to the Alternate Media Guidelines provides sample forms for the student to use to request electronic format materials from the college, as well as a form for colleges to use when requesting materials from publishers, including the text of the required certification. The Alternate Media Guidelines states, “AB 422 does not require publishers to provide electronic versions of materials which are published for a general audience, even though they might be useful to students.”⁸⁸ Further, “AB 422 may also be of only limited value in terms of obtaining electronic versions of mathematics and science materials or ‘nonprinted instructional materials.’”⁸⁹ “Finally, it is important to keep in mind that, even when it applies, AB 422 only obliges a publisher to provide electronic text to the college. It remains the college’s responsibility to provide instructional materials in an alternate media appropriate to the needs of the student.”⁹⁰

⁸⁷ Alternate Media Guidelines, page ii. See Attachment 5 to the Draft Staff Analysis.

⁸⁸ *Id.* at page 25.

⁸⁹ *Id.* at page 26.

⁹⁰ *Ibid.*

This responsibility to provide instructional materials in an appropriate alternate media comes from federal law. The equal educational opportunity requirements of the Rehabilitation Act and the ADA are enforced at public colleges and universities through the federal OCR.⁹¹ In 1996, the OCR opened a compliance review of the California Community Colleges focused on access to print and technology by students with visual disabilities, which was positively resolved in 2001.⁹² One of the accomplishments mentioned in the final review is that California law now requires “that publishers cooperate in providing printed textbooks in an electronic format to colleges in the California state postsecondary system (thus eliminating the onerous task of scanning hard copy paper).”⁹³ The OCR review, at page 4, continues:

Title II of the Americans with Disabilities Act (Title II) requires a public college to take appropriate steps to ensure that communications with persons with disabilities “are as effective as communications with others” [28 C.F.R. § 35.160(a)]. OCR has repeatedly held that the term “communication” in this context means the transfer of information, including (but not limited to) the verbal presentation of a lecturer, the printed text of a book, and the resources of the Internet. Title II further states that, in determining what type of auxiliary aid and service is necessary, a public college shall give primary consideration to the requests of the individual with a disability [28 C.F.R. § 35.160(b)(2)].

In construing the conditions under which communication is “as effective as” that provided to nondisabled persons, on several occasions OCR has held that the three basic components of effectiveness are timeliness of delivery, accuracy of the translations, and provision in a manner and medium appropriate to the significance of the message and the abilities of the individual with the disability.

Thus, community colleges have an existing duty under federal law to provide timely, accurate and appropriate accessible instructional materials to disabled students. In *Hayes, supra*, 11 Cal.App.4th 1564, 1593, the court found: “When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention.” The court determined: “the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed on local districts by federal mandate or by the state’s voluntary choice in its implementation of the federal program.”⁹⁴

Here, the Chancellor’s Office April 2000 Alternate Media Guidelines identifies the statutory procedure as an “option provided by AB 422 to obtain electronic text from publishers.”⁹⁵ Again, in the comments filed on the test claim, the Chancellor’s Office argues “the statute is not

⁹¹ OCR letter to Chancellor’s Office re: Docket Number 09-97-6001, August 21, 2001, page 3. See Attachment 6 to the Draft Staff Analysis.

⁹² *Id.* at page 1.

⁹³ *Id.* at page 3.

⁹⁴ *Hayes, supra*, 11 Cal.App.4th 1564, 1595. See also, *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 816: “no state mandate exists if the requirement or provisions of a state statute are, nevertheless, required by federal law.”

⁹⁵ Alternate Media Guidelines, page ii. See Attachment 5 to Draft Staff Analysis.

mandatory since colleges are not required to use the mechanism established by section 67302 or to ask publishers to provide texts in electronic form.”⁹⁶

Staff finds that there is an underlying federal mandate imposed directly on community college districts, and the state has set up the means for the community colleges to efficiently meet those requirements. Community colleges are free to directly scan or transcribe materials from hard copy publications to create accessible versions for their disabled students, just as they could prior to the operation of AB 422; however they may be in violation of federal law for failing to timely provide accessible materials.⁹⁷ Filling out a one-page form and sending it to a publisher, as in the sample provided in the Chancellor’s Office Alternate Media Guidelines, is a lower level of service than the alternative of scanning, or otherwise transcribing, an entire textbook into electronic format in order to meet the standards of equal access for disabled student required by federal law. Thus, staff finds that Education Code section 67302 does not impose a state-mandated program on community college districts.

C) Parking Services for Students with Disabilities

Education Code Section 67301 and California Code of Regulations, Title 5, Section 54100:

The test claim alleges that Education Code section 67301 (including former section 67311.5), and title 5, section 54100 requires community colleges to provide special parking for students with disabilities, as well as for those providing transportation for them. The claim alleges that this includes “waiv[ing] any restrictions, fines or meter fees.”⁹⁸

Education Code section 67301,⁹⁹ first added in 1990 as former section 67311.5, requires the California Community Colleges Board of Governors to adopt rules and regulations, which, pursuant to subdivision (a), include authorization for students with disabilities to park for unlimited periods in public time-restricted or metered spaces, without fee. Subdivision (b) requires that the adopted regulations require visitor parking be provided at no charge for a disabled person, or someone providing their transportation, and to “provide accommodations to any person whose disability prevents him or her from operating the gate controls” in a parking facility controlled by a mechanical gate. Subdivision (c) requires the California Community Colleges Board of Governors to institute audit procedures to monitor individual campus compliance with disabled parking laws, including the requirements of the ADA. Staff finds that Education Code section 67301, including former section 67311.5 as it was initially numbered, require duties of the Board of Governors to adopt regulations, but does not directly require

⁹⁶ Chancellor’s Office Comments, received March 16, 2004, page 3.

⁹⁷ The March 2004 comments on the test claim from the Chancellor’s Office, at page 3, assert: “to the extent that colleges do call upon publishers to provide the electronic texts, the statute creates a potential savings to districts since federal law requires districts to provide students with visual impairments access to print and computer-based information.”

⁹⁸ Test Claim Filing, pages 90-91.

⁹⁹ Added by Statutes 1995, chapter 758 (AB 446), amended by Statutes 2001, chapter 745 (SB 1191) (urgency oper. Oct. 12, 2001). The section was derived from former section 67311.5, which was added by Statutes 1990, chapter 1066, and repealed by Statutes 1995, chapter 758.

activities of community college districts, and therefore does not impose a state-mandated activity on community college districts.

California Code of Regulations, title 5, section 54100¹⁰⁰ is the implementing regulation for the disabled parking statute. Students with disabilities are defined in subdivision (b) as enrolled students who either qualify as disabled under the Vehicle Code, or are entitled to special parking through DSPS. Subdivision (c) allows community college districts to require the display of handicapped license plates or placards issued by the Department of Motor Vehicles, or by a sticker issued by the college.

Lost Revenue from Meter Fees and Parking Tickets

Subdivision (d) of title 5, section 54100 permits community colleges to charge the same parking permit fees imposed on students, but does not allow any other charge or surcharge, such as meter fees, or ticketing for parking for extended times in time-limited zones.

As background on the parking fees available for disabled student parking, staff notes that title 5, section 54100, subdivision (h) provides that: "Revenue from parking fees collected pursuant to Education Code section 76360 may be used to offset the costs of implementing this section." Education Code section 76360 permits community colleges to charge up to \$40 per semester and \$20 per intersession, to students, employees and others, for campus parking services. The fee may be increased for funding on-campus parking construction if both the number of students per available parking space, and the local cost per square foot of land, exceed statewide averages. Even if such higher charges are allowed, the fee may not exceed the actual cost of constructing a parking structure. Students receiving financial aid may not be charged more than \$20 per semester for parking. Fees collected must be deposited in a designated fund, and may only be expended for public transportation subsidies and parking services. Parking services is defined as "the purchase, construction, and operation and maintenance of parking facilities."

The claimant alleges that community college districts are required to "adopt and implement rules and regulations to provide parking at each campus or center for students with disabilities and those providing transportation for those students," and pursuant to title 5, section 54100, subdivision (d): "[o]ther than permit fees imposed pursuant to Education Code 72247,¹⁰¹ to waive any restrictions, fines or meter fees."¹⁰² The claimant acknowledges that DSPS apportionment funding and parking fees may be available to "reduce the costs incurred by these mandated duties."¹⁰³

Staff finds that mandate reimbursement for the lost revenue from waiving disabled students parking fines and meter fees is encompassed by the court's holding in *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284-1285:

¹⁰⁰ As added by Register 92, number 12, operative February 18, 1992.

¹⁰¹ Repealed, renumbered and reenacted as Education Code section 76360, by Statutes 1993, chapter 8.

¹⁰² Test Claim Filing, page 90.

¹⁰³ *Id.* at page 98. Special disabled student parking is a cost category listed in the DSPS program, both in Education Code section 67311 and California Code of Regulations, title 5, section 56026.

In light of the constraints imposed by the rules regarding strict construction of constitutional limitations on the power of the Legislature, and the rule that requires respect for the Legislature's adoption of a particular meaning of a constitutional phrase, we cannot extend the provisions of section 6 to include concepts such as lost revenue, that are not fairly implicated by the history, voter materials, language and legislative interpretation of section 6. We can only conclude that when the Constitution uses "costs" in the context of subvention of funds to reimburse for "the costs of such program," that some actual cost must be demonstrated, and not merely decreases in revenue.

In this case, title 5, section 54100, subdivision (d) permits community college districts to charge disabled students the same parking permit fees as other students, but disallows any additional revenue from charging meter fees and parking fines to disabled students, if they park in time-limited or other restricted areas. Such a potential decrease in revenue is not a cost subject to subvention pursuant to *County of Sonoma, supra*. Therefore, staff finds that title 5, section 54100, subdivision (d) does not impose a state-mandated program.

Providing Accessible Parking

The claimant further alleges that a reimbursable state-mandated program is imposed by the accessible parking requirements of title 5, section 54100, subdivisions (a), (e) and (g).¹⁰⁴ Subdivision (a) states that: "Each community college district which provides parking shall, consistent with the requirements of this section and Education Code section 67301, provide parking at each of its colleges or centers to students with disabilities and those providing transportation for such students." Title 5, section 54100, subdivision (e) requires:

Parking specifically designated for persons with disabilities pursuant to Section 7102 of Title 24¹⁰⁵ of the California Code of Regulations shall be available to students with disabilities, and those providing transportation to such persons, in those parking areas which are most accessible to facilities which the district finds are most used by students.

Title 5, section 54100, subdivision (g) requires:

When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for students with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

When test claim activities are also required by federal law, no state-mandated program can be found. In *Hayes, supra*, regarding a mandate claim for special education costs for K-12 schools, the Court found:

¹⁰⁴ *Id.* at pages 90-91.

¹⁰⁵ California Code of Regulations, title 24, section 7102 formerly provided the California Building Standards Code site development requirements for accessible disabled parking, however the section was deleted from the Code on April 24, 1995.

When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal mandate.¹⁰⁶

In the present case, the applicable Rehabilitation Act regulations require that a community college "shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons." (34 C.F.R. § 104.22(a).) The same requirement is found in the ADA, which applies to all public entities, even if they do not receive federal funds (28 C.F.R. § 35.150(a).)

All new construction and facilities altered after the effective dates of the ADA and Rehabilitation Act regulations are required to "be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by" disabled individuals.¹⁰⁷ Parking is explicitly included in the applicable definition of "facility" under both the Rehabilitation Act and the ADA.¹⁰⁸ Although both the ADA and the Rehabilitation Act provide that the law does not "necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities,"¹⁰⁹ this is not a broad exception to the rule requiring readily accessible facilities. The Appendix to the ADA regulations regarding the accessibility requirements of title II (for all public entities), specify:

Unlike title III of the Act, which requires public accommodations to remove architectural barriers where such removal is "readily achievable," or to provide goods and services through alternative methods, where those methods are "readily achievable," title II requires a public entity to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Congress intended the "undue burden" standard in title II to be significantly higher than the "readily achievable" standard in title III. Thus, although title II may not require removal of barriers in some cases where removal would be required under title III, the program access requirement of title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases. (28 C.F.R. Pt. 35, App. A, "Section 35.150 Existing Facilities".)

Under the Rehabilitation Act, recipients of public funds were required to make a transition plan to achieve accessibility within sixty days of May 9, 1980 (the effective date of the regulations),

¹⁰⁶ *Hayes, supra*, 11 Cal.App.4th 1564, 1593.

¹⁰⁷ 34 Code of Federal Regulations part 104.23, effective May 9, 1980; 28 Code of Federal Regulations part 35.151; effective January 26, 1992.

¹⁰⁸ 34 Code of Federal Regulations part 104.3, effective May 9, 1980; 28 Code of Federal Regulations part 35.104, effective January 26, 1992.

¹⁰⁹ 34 Code of Federal Regulations part 104.22(a), effective May 9, 1980; and 28 Code of Federal Regulations part 35.150(a), effective January 26, 1992.

and “where structural changes in facilities are necessary,” within three years.¹¹⁰ Under the ADA, any necessary structural changes that were not already accomplished under the Rehabilitation Act were required “within three years of January 26, 1992, but in any event as expeditiously as possible.”¹¹¹ The appendix to the ADA, regarding the transition plan time periods, also specifies “a public entity should provide an adequate number of accessible parking spaces in existing parking lots or garages over which it has jurisdiction.”¹¹²

Staff finds the state requirements of title 5, section 54100, subdivisions (a) and (e), to provide designated disabled parking “in those parking areas which are most accessible to facilities which the district finds are most used by students,” implements the federal law requirements to operate community colleges programs and facilities so that they are “readily accessible” to disabled individuals. Title 5, section 54100, subdivision (g), requires that accommodations be made for students with disabilities who are unable to operate gate controls in areas where the designated disabled parking is required to be available pursuant to section 54100, subdivision (e). Staff finds that making disabled student parking accessible through any “effective means deemed appropriate by the district,” is also required by the Rehabilitation Act and the ADA.¹¹³ Therefore, staff finds that title 5, section 54100, subdivisions (a), (e) and (g) do not impose a state-mandated program.

Notice of Availability of Accessible Parking

Finally, the claimant alleges that a reimbursable state-mandated program is imposed by the requirements of title 5, section 54100, subdivision (f):¹¹⁴

Each community college district shall post in conspicuous places notice that parking is available to students with disabilities and those providing transportation for such students.

The ADA requires that all public entities provide signage directing users to accessible entrances to facilities. As stated above, the definition of “facility” includes parking (28 C.F.R. § 35.104). 28 Code of Federal Regulations part 35.163, provides:

¹¹⁰ 34 Code of Federal Regulations part 104.22(d).

¹¹¹ 28 Code of Federal Regulations part 35.150(c).

¹¹² 28 Code of Federal Regulations part 35, Appendix A (“Time Periods”).

¹¹³ The ADA regulations state: “A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or *any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities.* A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.” (28 C.F.R. § 35.150(b)(1).) Similar language is found in the Rehabilitation Act regulations for recipients of federal funds (34 C.F.R. § 104.22(b).)

¹¹⁴ Test Claim Filing at pages 90-91.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility¹¹⁵ shall be used at each accessible entrance of a facility.

As stated above, *Hayes* specifies that when federal law “imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention.”¹¹⁶ Staff finds that by posting the accessibility signage necessary to comply with the federal law, a community college district will meet the state requirement to post conspicuous notice on the availability of accessible parking; therefore, section 54100, subdivision (f) has not imposed a state-mandated program.

Based upon all of the above, staff finds that Education Code section 67301, and California Code of Regulations, title 5, section 54100, do not impose a state-mandated program on community college districts.

CONCLUSION

Staff concludes that Education Code sections 67300, 67301, 67302, 67310, 67311, 67312, and 84850; California Code of Regulations, title 5, sections 54100, 56000, 56002, 56004, 56005, 56006, 56008, 56010, 56020, 56022, 56026, 56027, 56028, 56029, 56030, 56032, 56034, 56036, 56038, 56040, 56042, 56044, 56046, 56048, 56050, 56052, 56054, 56060, 56062, 56064, 56066, 56068, 56070, 56072, 56074, and 56076; and the “Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*,” do not impose a state-mandated program on community college districts subject to article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to deny this test claim.

¹¹⁵ I.e., the blue-and-white wheelchair symbol.

¹¹⁶ *Hayes, supra*, 11 Cal.App.4th 1564, 1593.

COOPERATIVE AGREEMENT
BETWEEN
CALIFORNIA STATE DEPARTMENT OF REHABILITATION
AND
CHANCELLOR'S OFFICE
THE CALIFORNIA COMMUNITY COLLEGES

ATTACHMENT 1

• WHEREAS, the Chancellor of the California Community Colleges (hereinafter referred to as Chancellor) and the Director of the Department of Rehabilitation (hereinafter referred to as Director) recognize that no otherwise qualified disabled person should be denied the benefits of California Community Colleges solely by reason of his/her disability; and

WHEREAS, the Department of Rehabilitation (hereinafter referred to as Department) recognizes that it shares responsibility with educational systems as a provider of needed services to persons with disabilities and that the concerns and goals of Education and those of Vocational Rehabilitation are clearly compatible and every effort will be made to effectively and efficiently coordinate available services; and

WHEREAS, the Chancellor and the Director agree to make every effort with the Governor of the State of California, the Department of Finance and before the Legislature of the State of California and Congress of the United States to promote and support the appropriation of adequate State and Federal funds to enable the community colleges to provide appropriate educational opportunities to all their disabled students; and

WHEREAS, the Chancellor acknowledges and agrees that the community colleges are required by Section 504 of the Rehabilitation Act of 1973, and the regulations implementing that Section and Article 9.5 (11135 to 11135.5) of the California Government Code to provide auxiliary aids necessary to make the benefits of the community college programs fully accessible to all their disabled students; and

WHEREAS, the Chancellor and the Director wish to ensure that no disabled person be denied educational auxiliary aids or services and programs as a result of ineffective coordination; and

WHEREAS, the Chancellor, on behalf of Community Colleges and the Director, on behalf of the Department, agree to the following:

1. The Community Colleges will refer appropriate students to the Department for eligibility evaluation and services.
2. Beginning July 1, 1981, the Department will discontinue the provision of auxiliary aid services to its clients attending community colleges. To the extent possible, the community college system will continue to provide auxiliary aids and other educational services to all needy disabled community college students.
3. Disabled community college students who are or will be clients of the Department, will continue to receive non-auxiliary aid services provided by the Department, if in the judgment of the rehabilitation counselor such services are necessary to facilitate the agreed upon individualized written rehabilitation program (IWRP).
4. Pertaining to and for the benefit of disabled students, a free exchange of information to the extent permitted by the respective rules and regulations of both community colleges and the Department, each taking appropriate steps to protect confidential information so exchanged.

5. In order to facilitate closer working relationships at the local level, Department District Administrators and College Presidents should develop written working agreements.

For the purposes of this agreement, auxiliary aids are defined as those device and services necessary to ensure that a disabled student will enjoy the benefits of and participation in all the education programs operated by the community colleges on an equal basis with other students.

Beginning July 1, 1981, the following auxiliary aids related to educational programs will no longer be provided by the Department of Rehabilitation:

1. Reader services for the blind and visually impaired.
2. Notetaker services for the blind and visually impaired.
3. Interpreter services for the deaf and hearing impaired.
4. On-campus mobility assistance.
5. On-campus transportation.
6. Special adaptive equipment.

The Department will continue providing its traditional services to student/clients including but not limited to the following:

1. Medical/psychiatric evaluation of disability.
2. Physical, psychiatric or speech therapy.
3. Individual diagnostic testing.
4. Vocational rehabilitation counseling.
5. Off-campus transportation, including mileage allowance, bus or taxi fare, other than for education programs and when service does not already exist for non-disabled students.
6. Maintenance - supplement funds for basic living expenses when unavailable from other resources.
7. Off-campus mobility instruction.
8. Prosthetic/orthotic maintenance and repair.
9. Reader and notetaker services for the blind and visually impaired and interpreter services for the deaf and hearing impaired other than for educational programs.
10. Job placement services.
11. Payment of college fees (registration, books, supplies, etc.).
12. Special adaptive equipment, unless clearly useable solely for educational purposes.
13. Tutoring for individual students when college services are non-existent or insufficient.

NOW, THEREFORE, BE IT RESOLVED that this interagency agreement shall serve as a vehicle for both agencies to cooperate in providing services to eligible disabled students beginning on the date that this agreement is signed by both parties and continuing through Fiscal Year 1984/85. This document may be revised, if appropriate, by representatives of both signatories and terminated prior to July 1, 1985, only by mutual consent between the agencies or by a written three-months prior notification by either party.

BY: Gerald Hayward
 Gerald Hayward, Chancellor
 California Community Colleges

Date: 6/24/81

BY: Edward V. Roberts
 Edward V. Roberts, Director
 California Department of Rehabilitation

Date: 6/23/81

1 they are clients of the department.
2

3 An interagency agreement between the Department of Rehabilitation and
4 postsecondary education institutions (community colleges, CSUS, and
5 UC) provides for a transfer of funding and management of auxiliary
6 services, including readers for the blind, from the Department of Re-
7 habilitation to these postsecondary education systems. The Department
8 of Rehabilitation cites federal law and state law to justify the re-
9 sponsibility of public postsecondary institutions to provide auxil-
10 iary educational services to handicapped students.
11

12 However, organizations representing the blind contend that the services
13 they receive under the auspices and management of postsecondary sys-
14 tems will be much more limited than those they receive from the Depart-
15 ment of Rehabilitation. They say that higher education institutions
16 would not let them choose their own readers, and would place unaccept-
17 able restrictions upon the hours and locations where the reader services
18 must be used. For this reason, these organizations prefer to have the
19 reader services remain within the jurisdiction of the Department of
20 Rehabilitation.
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57



Print

Close
Window

Auxiliary Aids and Services for Postsecondary Students with Disabilities

Higher Education's Obligations Under Section 504 and Title II of the ADA

U.S. Department of Education
Office for Civil Rights
Washington, D.C.

Revised September 1998

Section 504 of the Rehabilitation Act of 1973

In 1973, Congress passed Section 504 of the Rehabilitation Act of 1973 (Section 504), a law that prohibits discrimination on the basis of physical or mental disability (29 U.S.C. Section 794). It states:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance

The Office for Civil Rights in the U.S. Department of Education enforces regulations implementing Section 504 with respect to programs and activities that receive funding from the Department. The Section 504 regulation applies to all recipients of this funding, including colleges, universities, and postsecondary vocational education and adult education programs. Failure by these higher education schools to provide auxiliary aids to students with disabilities that results in a denial of a program benefit is discriminatory and prohibited by Section 504.

Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits state and local governments from discriminating on the basis of disability. The Department enforces Title II in public colleges, universities, and graduate and professional schools. The requirements regarding the provision of auxiliary aids and services in higher education institutions described in the Section 504 regulation are generally included in the general nondiscrimination provisions of the Title II regulation.

Postsecondary School Provision of Auxiliary Aids

The Section 504 regulation contains the following requirement relating to a postsecondary school's obligation to provide auxiliary aids to qualified students who have disabilities:

A recipient . . . shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

The Title II regulation states:

A public entity shall furnish appropriate auxiliary aids and services where necessary to afford

an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

It is, therefore, the school's responsibility to provide these auxiliary aids and services in a timely manner to ensure effective participation by students with disabilities. If students are being evaluated to determine their eligibility under Section 504 or the ADA, the recipient must provide auxiliary aids in the interim.

Postsecondary Student Responsibilities

A postsecondary student with a disability who is in need of auxiliary aids is obligated to provide notice of the nature of the disabling condition to the college and to assist it in identifying appropriate and effective auxiliary aids. In elementary and secondary schools, teachers and school specialists may have arranged support services for students with disabilities. However, in postsecondary schools, the students themselves must identify the need for an auxiliary aid and give adequate notice of the need. The student's notification should be provided to the appropriate representative of the college who, depending upon the nature and scope of the request, could be the school's Section 504 or ADA coordinator, an appropriate dean, a faculty advisor, or a professor. Unlike elementary or secondary schools, colleges may ask the student, in response to a request for auxiliary aids, to provide supporting diagnostic test results and professional prescriptions for auxiliary aids. A college also may obtain its own professional determination of whether specific requested auxiliary aids are necessary.

Examples of Auxiliary Aids

Some of the various types of auxiliary aids and services may include:

- taped texts
- notetakers
- interpreters
- readers
- videotext displays
- television enlargers
- talking calculators
- electronic readers
- Braille calculators, printers, or typewriters
- telephone handset amplifiers
- closed caption decoders
- open and closed captioning
- voice synthesizers
- specialized gym equipment
- calculators or keyboards with large buttons
- reaching device for library use
- raised-line drawing kits
- assistive listening devices
- assistive listening systems
- telecommunications devices for deaf persons.

Technological advances in electronics have improved vastly participation by students with disabilities in educational activities. Colleges are not required to provide the most sophisticated auxiliary aids available; however, the aids provided must effectively meet the needs of a student with a disability. An institution has flexibility in choosing the specific aid or service it provides to the student, as long as the aid or service selected is effective. These aids should be selected after consultation with the student who will use them.

Effectiveness of Auxiliary Aids

No aid or service will be useful unless it is successful in equalizing the opportunity for a particular student with a disability to participate in the education program or activity. Not all students with a similar disability benefit equally from an identical auxiliary aid or service. The regulation refers to this complex issue of effectiveness in several sections, including:

Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions.

There are other references to effectiveness in the general provisions of the Section 504 regulation which state, in part, that a recipient may not:

Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others; or

Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others.

The Title II regulation contains comparable provisions.

The Section 504 regulation also states:

[A]ids, 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.

The institution must analyze the appropriateness of an aid or service in its specific context. For example, the type of assistance needed in a classroom by a student who is hearing-impaired may vary, depending upon whether the format is a large lecture hall or a seminar. With the one-way communication of a lecture, the service of a notetaker may be adequate, but in the two-way communication of a seminar, an interpreter may be needed. College officials also should be aware that in determining what types of auxiliary aids and services are necessary under Title II of the ADA, the institution must give primary consideration to the requests of individuals with disabilities.

Cost of Auxiliary Aids

Postsecondary schools receiving federal financial assistance must provide effective auxiliary aids to students who are disabled. If an aid is necessary for classroom or other appropriate (nonpersonal) use, the institution must make it available, unless provision of the aid would cause undue burden. A student with a disability may not be required to pay part or all of the costs of that aid or service. An institution may not limit what it spends for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its provision of auxiliary aids on availability of funds. In many cases, an institution may meet its obligation to provide auxiliary aids by assisting the student in obtaining the aid or obtaining reimbursement for the cost of an aid from an outside agency or organization, such as a state rehabilitation agency or a private charitable organization. However, the institution remains responsible for providing the aid.

Personal Aids and Services

An issue that is often misunderstood by postsecondary officials and students is the provision of personal aids and services. Personal aids and services, including help in bathing, dressing, or other personal care, are not required to be provided by postsecondary institutions. The Section 504 regulation states:

Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Title II of the ADA similarly states that personal services are not required.

In order to ensure that students with disabilities are given a free appropriate public education, local education agencies are required to provide many services and aids of a personal nature to students with disabilities when they are enrolled in elementary and secondary schools. However, once students with

disabilities graduate from a high school program or its equivalent, education institutions are no longer required to provide aids, devices, or services of a personal nature.

Postsecondary schools do not have to provide personal services relating to certain individual academic activities. Personal attendants and individually prescribed devices are the responsibility of the student who has a disability and not of the institution. For example, readers may be provided for classroom use but institutions are not required to provide readers for personal use or for help during individual study time.

Questions Commonly Asked by Postsecondary Schools and Their Students

Q: What are a college's obligations to provide auxiliary aids for library study?

A: Libraries and some of their significant and basic materials must be made accessible by the recipient to students with disabilities. Students with disabilities must have the appropriate auxiliary aids needed to locate and obtain library resources. The college library's basic index of holdings (whether formatted on-line or on index cards) must be accessible. For example, a screen and keyboard (or card file) must be placed within reach of a student using a wheelchair. If a Braille index of holdings is not available for blind students, readers must be provided for necessary assistance.

Articles and materials that are library holdings and are required for course work must be accessible to all students enrolled in that course. This means that if material is required for the class, then its text must be read for a blind student or provided in Braille or on tape. A student's actual study time and use of these articles are considered personal study time and the institution has no further obligation to provide additional auxiliary aids.

Q: What if an instructor objects to the use of an auxiliary or personal aid?

A: Sometimes postsecondary instructors may not be familiar with Section 504 or ADA requirements regarding the use of an auxiliary or personal aid in their classrooms. Most often, questions arise when a student uses a tape recorder. College teachers may believe recording lectures is an infringement upon their own or other students' academic freedom, or constitutes copyright violation.

The instructor may not forbid a student's use of an aid if that prohibition limits the student's participation in the school program. The Section 504 regulation states:

A recipient may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

In order to allow a student with a disability the use of an effective aid and, at the same time, protect the instructor, the institution may require the student to sign an agreement so as not to infringe on a potential copyright or to limit freedom of speech.

Q: What if students with disabilities require auxiliary aids during an examination?

A: A student may need an auxiliary aid or service in order to successfully complete a course exam. This may mean that a student be allowed to give oral rather than written answers. It also may be possible for a student to present a tape containing the oral examination response. A test should ultimately measure a student's achievements and not the extent of the disability.

Q: Can postsecondary institutions treat a foreign student with disabilities who needs auxiliary aids differently than American students?

A: No, an institution may not treat a foreign student who needs auxiliary aids differently than an American student. A postsecondary institution must provide to a foreign student with a disability

the same type of auxiliary aids and services it would provide to an American student with a disability. Section 504 and the ADA require that the provision of services be based on a student's disability and not on such other criteria as nationality.

Q: Are institutions responsible for providing auxiliary services to disabled students in filling out financial aid and student employment applications, or other forms of necessary paperwork?

A: Yes, an institution must provide services to disabled students who may need assistance in filling out aid applications or other forms. If the student requesting assistance is still in the process of being evaluated to determine eligibility for an auxiliary aid or service, help with this paperwork by the institution is mandated in the interim.

Q: Does a postsecondary institution have to provide auxiliary aids and services for a nondegree student?

A: Yes, students with disabilities who are auditing classes or who otherwise are not working for a degree must be provided auxiliary aids and services to the same extent as students who are in a degree-granting program.

For More Information

For more information on Section 504 and the ADA and their application to auxiliary aids and services for disabled students in postsecondary schools, or to obtain additional assistance, see the list of OCR's 12 enforcement offices containing the address and telephone number for the office that serves your area, or call 1-800-421-3481.

[Top](#)

 Print

 Close
Window

Last Modified: 03/10/2005

COMMONLY ASKED QUESTIONS ABOUT "MANDATED" VS "NON-MANDATED" DSP&S SERVICES

Q. What DSP&S services are colleges mandated to provide?

A. Because of the nature of serving students with disabilities there is no specific list of mandated versus non-mandated services.

Technically, no "DSP&S" services are required, because participation in DSP&S is voluntary on the part of each college. Colleges are governed by the Title 5 regulations regarding DSP&S only because they accept the DSP&S funds allocated to them every year. A college could refuse the DSP&S funds and not be subject to the requirements of Title 5 regarding DSP&S.

However, colleges are still subject to state and federal law regarding the civil rights of people with disabilities to be served in a non-discriminatory manner. State Government Code sections 11135-11139.5, Section 504 of the federal Rehabilitation Act and the federal American's with Disabilities Act all guarantee equal access to people with disabilities, and community colleges are subject to all of those laws.

Given all of that, the answer of what is "mandated" always depends on the disability-related educational limitation(s) of each individual student. You can never say that any specific type of service or accommodation is always "mandated", because there are some students with disabilities who won't need those services in order to receive equal access to the instruction, information, or programs offered by the college. For example, sign language interpreting for auditory information is a standard service that no one questions as an appropriate accommodation for people with disabilities. However, it is only "mandated" for those students, such as a deaf student, who cannot receive the information as it is originally presented unless they receive the accommodation of sign language interpreting. A student who is hard-of-hearing and can use an assisted listening device that provides the information as effectively as the sign language is not necessarily being denied a "mandated" service if the sign language interpreter is not also provided.

There is a slightly different answer regarding some services typically provided by DSP&S programs, depending if the question being asked is whether a service is legally required versus a requirement of receiving DSP&S funding. Two services that come up in such questions are Learning Disability assessment and High Tech Center instruction. Neither of these services is specifically required by state or federal law or regulation to be provided by colleges to students with disabilities. However, California community colleges have received increased funding in the past to address the assessment of learning disabilities and instruction in assistive computer software. Additionally, based on a federal Department of Education, Office of Civil Rights review of the California

community college system and subsequent resolution agreement with the Chancellor's Office, alternate media services (Braille, etext, large print, captioning) were specifically funded. So, while there is no direct legal or regulatory requirement to provide those services, there is a system standard and general programmatic expectation that has developed regarding access for students to such services, and in the case of alternate media and agreement with the federal government that such services will be provided at a higher level than in the past.

The issue of what is "mandated" must always be addressed on an individual basis, and consultation with district legal staff and the Chancellor's Office is recommended.

California Community Colleges

**Guidelines for
Producing Instructional and
Other Printed Materials in
Alternate Media for
Persons with Disabilities**

April 2000



Chancellor's Office
California Community Colleges
Sacramento, California

PUBLISHING INFORMATION

This document has been developed by the Chancellor's Office based on the recommendations of a Special Alternate Media Workgroup established by the Consultation Council to advise the Chancellor on this subject. It is published by the Chancellor's Office, California Community Colleges, 1102 Q Street, Sacramento, California, 95814-6511. This document can be obtained by contacting the Chancellor's Office at (916) 322-3234 or downloaded from the Chancellor's Office website at <http://cccco.edu/cccco/ss/dsps/OCR/Amg4.doc>.

©2000 by the Chancellor's Office, California Community Colleges.

Readers are advised that the fair use provisions of the U.S. Copyright Law permit the reproduction of material from this publication for "purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research."

Questions on the content of this publication should be addressed to Scott Hamilton, Coordinator, Disabled Students Programs and Services, at the address provided above; telephone (916) 327-5892; FAX (916) 327-8232.

California Community Colleges

**Guidelines for
Producing Instructional and
Other Printed Materials in
Alternate Media for
Persons with Disabilities**

April 2000

Developed By:

**The Chancellor's Office
In Collaboration with the Alternate Media Workgroup**

Table of Contents

PREFACE	i
PART I. PRODUCING MATERIAL IN ALTERNATE MEDIA	
A. Legal Requirements.....	1
B. Scope and Purpose	3
C. Basic Principles	4
D. Establishing Policies and Procedures	6
E. Types of Alternate Media.....	7
1. Audio/Readers.....	7
2. Braille	9
3. Tactile Graphics	10
4. Large Print.....	11
5. Electronic Text	11
F. Verification of Disability and Functional Limitations	13
G. Individual Preference And Offering Alternatives	13
H. Analyzing Requests.....	14
I. Examples	16
J. Resolving Disputes.....	18
K. Considerations for Formatting E-Text and Designing Software and Web Pages	18
1. Considerations for using ASCII Text Generated by a Scanner or From Another Outside Source	19
2. Considerations When E-Text is Available in a More Sophisticated Format	19
3. Considerations for Complex Electronic Documents, Software and/or Web Pages	20
4. Considerations for Designing Software for Use by Persons Who are Blind.....	21
5. Considerations for Design of Document/Software for Students with Low Vision.....	23

6. Considerations for Formatting E-text to Produce Hardcopy Large Print..... 24

PART II GUIDELINES FOR IMPLEMENTATION OF ASSEMBLY BILL 422

A. Scope and Purpose 25
B. Basic Coverage and Limitations of AB 422..... 25
C. Alternate Media Centers..... 26
D. Certification of Requests 27
E. Security of E-Text 28
F. Determining Which Materials are Required or Essential..... 29
G. File Formats..... 30
H. Mathematics and Science Materials..... 32
I. Nonprinted Instructional Materials 32
J. Revising Files Received From a Publisher 33
K. Recommended Process for Handling Requests..... 33
L. Encouraging Publishers to Enhance Accessibility 35

APPENDICES

Appendix I Alternate Media Committee Members
Appendix II Alternate Media Resources
Appendix III Braille Institute: Education and Awareness—
A Guide to Large Print for People with Low Vision
Appendix IV Formatting Braille Documents
Appendix V Relevant Provisions of the Federal Copyright Law
Appendix VI Chaptered Legislation, Bill Number AB 422 (Chaptered 09/15/1999)

SAMPLE FORMS AND LETTERS

Appendix VII Letter to Publishers From Bookstores
Appendix VIII Student Data Form
Appendix IX Certification Form
Appendix X Glossary of Terms

Preface

In March 1996, the U.S. Department of Education, Office for Civil Rights (OCR) undertook a statewide review of the extent to which community colleges were meeting their obligation under Title II and Section 504 to provide students with visual impairments access to print and computer-based information. OCR concluded that the California community colleges employed "methods of administration" which substantially restricted accomplishment of the educational objectives of community college students with visual impairments.

The OCR report, which was issued in January 1998, asked the Chancellor's Office to take steps in nine separate areas to improve access for blind and visually impaired students. One of these areas involved the provision of textbooks, instructional materials, and other printed information in alternate media such as braille, large print, or electronic text. OCR found that many colleges did not have adequate systems in place for responding in a timely and efficient manner to requests for materials in alternate media. OCR concluded that, in order to address this problem, the Chancellor's Office should work with the colleges to develop a coordinated systemwide approach that would streamline the present time-consuming and labor-intensive process of converting hardcopy print into electronic text and/or braille.

The Chancellor's Office has been working for the past two years to put in place the policies and procedures necessary to respond to the OCR report. In the Fall of 1998, the Chancellor asked the Consultation Council to establish a special Alternate Media Workgroup to advise staff regarding the best approach to take in addressing the problem of producing materials in alternate media.

After discussion of various options with the Workgroup, the Chancellor's Office decided to prepare and submit a Budget Change Proposal (BCP) for the 2000-2001 fiscal year requesting funding to assist colleges with acquiring the equipment and trained staff they will need to respond to requests for alternate media. The BCP also requests funding to establish a statewide Alternate Media Center which would centrally handle the larger or more difficult requests.

Final decisions about the 2000-2001 budget will not be made until July 2000. Even if the proposal is funded to establish the Alternate Media Center, it probably would not be operational until the middle of 2001 at the earliest. Moreover, the plan proposed in the BCP contemplates that local college staff will make decisions about how to satisfy requests for alternate media and that most small documents, especially those needed with a short turn-around time, would still be handled locally. Thus, even if the BCP is fully funded, colleges will continue to have considerable responsibility for production of materials in alternate media.

Part I of this document sets forth guidelines for colleges to use in responding to requests for materials in alternate media. The guidelines are based on the recommendations of the Workgroup and have been reviewed and revised based on input from the Disabled Student

Programs and Services Regional Coordinators, the High Tech Center Training Unit Advisory Committee, and other interested parties.

In a related development, on September 15, 1999, California Governor Gray Davis signed into law Assembly Bill 422 (Steinberg) which requires publishers of instructional material to provide the material at no cost in an electronic format for use by students with disabilities at the University of California, California State University, and California Community Colleges. This new law, which became effective January 1, 2000, will assist colleges in meeting their pre-existing obligations to provide instructional materials in alternate media. The electronic text supplied by a publisher may be used to produce large print, translated and sent to a braille embosser, or accessed directly with speech synthesizers or refreshable braille displays.

However, *California Education Code*, Section 67302, which was added by AB 422, provides that the Board of Governors must adopt guidelines for implementation of the new law. Part II of this document addresses the procedures to be used by colleges in taking advantage of the option provided by AB 422 to obtain electronic text from publishers.

Part I

PRODUCING MATERIAL IN ALTERNATE MEDIA

A. LEGAL REQUIREMENTS

Both state and federal law require community colleges to operate all programs and activities in a manner which is accessible to students with disabilities.

At the federal level, requirements for access for persons with disabilities were first imposed on recipients of federal funding by Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and its accompanying regulations set forth at *34 Code of Federal Regulations* (C.F.R.), Section 104. Similar requirements were later imposed on all public entities, regardless of whether or not they receive federal funding, by the Americans with Disabilities Act (42 U.S.C. § 12100 et seq.) and the regulations implementing Title II of the ADA which appear at 28 C.F.R. § 35.

In particular, the Section 504 regulations and the regulations implementing Title II of the Americans with Disabilities Act (ADA) contain nearly identical provisions stating that recipients of federal funds and public entities in providing any aid, benefit or service, may not afford a qualified individual with a disability an opportunity to participate that is not as effective as that provided to others. (See 34 C.F.R. § 104.4 (b)(1)(iii) and 28 C.F.R. § 35.130(b)(1)(iii).) Title II recognizes the special importance of communication, which includes access to information, in its implementing regulation at 28 C.F.R. § 35.160(a). The regulation requires that a public entity, such as a community college, take appropriate steps to ensure that communications with persons with disabilities are as effective as communications with others.

The United States Department of Education, Office for Civil Rights (OCR) is responsible for ensuring that all educational institutions comply with the requirements of all federal civil rights laws, including Section 504 and Title II of the ADA. As a result, the opinions of OCR are generally accorded considerable weight by the courts in interpreting the requirements of these laws. OCR has had occasion to issue several opinions applying the requirements of the Section 504 and ADA regulations to situations involving access to instructional materials.

OCR has held that the three basic components of effective communication include: "timeliness of delivery, accuracy of the translation, and provision in a manner and medium appropriate to the significance of the message and the abilities of the individual with the disability." (OCR Docket No. 09-97-2145, January 9, 1998.)

In applying this test to a case involving access to materials in a college library, OCR commented that:

“When looking at exactly which of its resources a library is obligated to provide in an accessible medium, the short answer is any resources the library makes available to nondisabled patrons must be made accessible to blind patrons. This includes the library catalogue, the archived microfiche, daily newspapers, and the internet (if that is a service provided to sighted patrons). A categorical decision by a public library not to even consider a request by a patron for a particular alternative format is in most instances a violation of Title II. However, when determining what alternative format is most appropriate, a library may take into account how frequently the material is used by patrons and the longevity of the material’s usefulness. For instance, more serious consideration should be given to translating into braille frequently used reference materials which have a long (sic) ‘shelf-life’ than would be true for daily newspapers.” (OCR Docket No. 09-97-2002, April 7, 1997.)

In another case, OCR required a college to provide a textbook in braille because

“in some situations, the subject matter of the textbook is particularly ill-suited to an auditory translation. For example, mathematics and science textbooks, as well as textbooks to assist in acquiring proficiency in a written (rather than conversational) foreign language, ordinarily rely heavily on unique symbols, equations, charts, grids, subscripts, punctuation, underscores, and accent marks, which are often hard to effectively convey through auditory speech.” (OCR Docket No. 09-97-2145, January 9, 1998.)

OCR also points out that the courts have held that a public entity violates its obligations under the ADA when it only responds on an ad hoc basis to individual requests for accommodation. There is an affirmative duty to develop a comprehensive policy in advance of any request for auxiliary aids or services.

There are also state laws and regulations which require community colleges to make printed materials available in alternate media. *California Government Code*, Section 11135 et seq. prohibits discrimination on various grounds, including mental or physical disability, by entities receiving funding from the state of California. The Board of Governors has adopted regulations at Title 5, *California Code of Regulations*, Section 59300 et seq. to implement these requirements with respect to funds received by community college districts from the Board of Governors or Chancellor’s Office. These regulations require community college districts and the Chancellor’s Office to investigate and attempt to resolve discrimination complaints filed by students or employees.

B. SCOPE AND PURPOSE

The remainder of this document sets forth guidelines developed by the Chancellor's Office to address specific issues community college districts will face in meeting their legal obligation to make instructional materials and other information resources available in alternate formats to persons with disabilities.

It should be noted that the legal requirements discussed in these guidelines are not limited to students in the classroom environment. A college would be required to make available, upon request, in alternate media, any publication it offers to the general public such as the college catalogue, announcements about cultural or recreational events sponsored by the college, job announcements, etc. Nevertheless, since most requests are likely to come from students, the primary focus in these guidelines will be on providing instructional materials in accessible formats. Colleges should, however, establish policies and procedures which take into account the possibility that others will also make such requests.

It is also important to keep in mind that colleges are required to provide access to all instructional materials or other information resources regardless of whether the source material is in printed, electronic, or some other form. On September 3, 1999, the Chancellor's Office issued guidelines addressing accessibility of curriculum, web pages, software and hardware used in distance education courses, *Distance Education: Access Guidelines for Students with Disabilities, August 1999*. Although those guidelines dealt specifically with distance education, the principles and technical information they contain are also relevant here and should be applied in making electronic resources accessible for use on-campus. This would include, for example, materials on CD-ROM used in a classroom, software used in computer labs, a database of job opportunities in the Career Center, or a web page providing information about college-sponsored events open to the general public. The present guidelines do provide some information on this subject (see Section K), but will, for the most part, focus on ways of converting instructional materials or other resources from print into alternate media.

As used in these guidelines, the terms "alternate media" or "accessible formats" generally refer to methods of making information accessible to persons with disabilities.¹ The most common types of accessible formats are audio, braille, tactile graphics, large print, or electronic text. OCR has found that most colleges rely heavily on use of readers or pre-recorded audio tapes as a means of making printed material accessible for blind or visually impaired students. (OCR Docket No. 09-97-2145, January 9, 1998.) Although these guidelines will briefly discuss the appropriate use of readers and audio format, the primary purpose of the guidelines is to help colleges identify situations where audio may not be an adequate medium and to describe how to make materials available in other formats.

¹ The OCR investigation dealt with services for blind and visually impaired students and the Chancellor's Office was asked to develop guidelines for production of materials in alternate media for that population. While the primary purpose of these guidelines is to address the issues raised by OCR, it is recognized that individuals with learning disabilities or other types of disabilities may also benefit from materials in alternate media.

These guidelines are not legally binding on districts, but the Chancellor's Office will apply these guidelines in determining whether a district has met its obligations under Title 5, Section 59300 et seq. Districts that follow these guidelines will generally be regarded as having met those obligations. Districts that do not follow these guidelines will bear the burden of demonstrating that they have achieved compliance with their legal obligation to provide access to printed materials.

C. BASIC PRINCIPLES

The following are general principles that should be followed in ensuring that instructional materials and other information resources are accessible to and usable by persons with disabilities. They represent the general concepts of the ADA and its regulations but do not provide a detailed legal analysis of the ADA requirements. Persons utilizing this document who are unfamiliar with the ADA may wish to consult the campus ADA Coordinator or Disabled Student Programs & Services (DSP&S) Coordinator for further interpretation. In the remainder of this document, specific guidelines will be provided for resolving access issues with respect to particular situations.

1. Colleges should establish procedures for responding in a timely manner to requests for materials in alternate media.² Issues concerning requests by students should be resolved through appropriate campus procedures as defined under Title 5, Section 56027.
2. Whenever possible, information should be provided in the alternative format preferred by the person making the request (i.e. braille, audio, tactile graphics, large print, electronic text). (28 CFR § 35.160(b)(2).)
3. If it would be difficult or expensive to provide the material in the requested medium by the time it is needed, the college may offer to provide it in another medium *which would be equally effective* given the needs of the person requesting the accommodation. To determine whether a proposed alternative format would be equally effective, the proposed alternative should be compared to the format originally requested in terms of accuracy, timeliness of delivery, the "shelf-life" or longevity of the material, and the extent to which the medium is appropriate to the significance of the message and the abilities of the individual making the request. Methods which are adequate for short, simple or less important communications may not be equally effective or appropriate for longer, more

² Timeliness is a relative term which depends on the context. For a student who requests a textbook in an accessible format, responding in a timely manner would involve providing the book in alternative format by the time other students in the class will be called upon to use the book. If the entire text cannot be supplied in alternate format by that time, it may be necessary to deliver it in installments that keep pace with the class. A student who requests the list of student organizations in Braille might be able to wait a while if there is no particular deadline by which he or she needs to decide about participating in an organization. On the other hand, a person who requests a large print copy of the program for a play will need it by the time the play is presented and providing it later will be of little value.

complex, or more critical material. (Example: It may be appropriate to have articles or handouts that will be used as general background material for a course read onto audio tape for use by a blind student. However, it would probably be legitimate for a braille user to expect that the course syllabus, critical reference materials, and texts to be discussed in class would be available in braille.)

4. Materials should be provided in a timely manner in the medium requested, or in another equally effective format, unless doing so would fundamentally alter the nature of the program or activity or result in undue financial and administrative burdens on the district. In such cases, the college must nevertheless provide an alternative accommodation which will permit the individual with a disability to participate in the program or activity to the maximum extent possible. (28 CFR § 35.164.)
5. After the adoption date of these guidelines, any instructional resources or materials purchased or leased from a third-party provider or created or substantially modified “in-house” must be accessible to students with disabilities, unless doing so would fundamentally alter the nature of the instructional activity or result in undue financial and administrative burdens on the district.
6. Colleges are encouraged to review all existing curriculum, materials and resources as quickly as possible and make necessary modifications to ensure access for students with disabilities. At a minimum, the Chancellor’s Office will expect that the instructional resources or materials used in each course will be reviewed and revised as necessary when the course undergoes curriculum review pursuant to Title 5, *California Code of Regulations*, Section 55002 every six years as part of the accreditation process. In the event that a student with a disability enrolls in a course before this review is completed, the college will be responsible for acting in a timely manner to make instructional materials or resources used in the course accessible, unless doing so would fundamentally alter the nature of the instructional activity or result in undue financial and administrative burdens on the district.
7. In the event that a discrimination complaint is filed alleging that a college has failed to provide materials in an appropriate alternate media, the Chancellor’s Office and the OCR will not generally accept a claim of undue burden based on the subsequent substantial expense of providing access, when such costs could have been significantly reduced by considering the issue of accessibility at the time the instructional or other materials were initially purchased.
8. Ensuring that instructional materials and other information resources are accessible to students with disabilities is a shared college responsibility. All college administrators, faculty and staff who are involved in the development and use of such materials or resources share this obligation. The Chancellor’s Office will make every effort to provide technical support and training for faculty and staff

involved in the creation of accessible instructional materials and information resources.

D. ESTABLISHING POLICIES AND PROCEDURES

As discussed above, OCR has held that it is not sufficient for a college to wait and deal on an ad hoc basis with requests for materials in alternate media. Rather, policies and procedures for dealing with such requests should be developed so that requests can be handled promptly and efficiently when they do arise. Similarly, the regulations governing the Disabled Students Programs and Services (DSP&S) programs require that colleges receiving DSP&S funds establish policies and procedures for responding to requests for academic adjustments, including requests for instructional materials in alternate media. (Title 5, § 56027.)

For those colleges that already have in place policies and procedures for dealing with accommodation requests, those policies should be reviewed in light of these guidelines to be sure they deal appropriately with issues related to provision of materials in alternate media. Colleges that have not yet developed such policies should do so, consistent with these guidelines, and implement those policies as quickly as possible.

One important aspect of dealing with production of alternate media is adequate advance notice and planning. It may be desirable to have faculty, bookstore managers, DSP&S staff, and organizations of students with disabilities work together to devise a system which will give the needed lead time for obtaining materials in alternate media with the least disruption for all concerned. Faculty should be strongly encouraged to make textbook selections as far in advance as possible and to avoid changing the selection unless there are compelling reasons. Bookstores should remind faculty about the need to place orders as early as possible and should process the orders promptly once they are received. Faculty should also be asked to provide syllabi, handouts, and other materials in E-text whenever possible.

The policy should specify how far in advance a student needs to make a request for materials in alternate media in order to ensure a high probability that the college will meet the request. This notice requirement needs to be reasonable and take into account when faculty decide on textbook selections, when students register, and the fact that last minute changes will occur despite the best planning. Students should be strongly encouraged to plan their course schedules as early as possible and to take advantage of advanced registration. However, the policy should clearly state that every effort will be made to meet late requests.

The notice required should be based on the type of material being requested. For example, it would probably only take a few days to produce a short class handout in braille if the college has its in-house braille production system operational. One or two days might even be reasonable if the faculty member makes the handout available in E-text. On the other hand, getting a textbook recorded or produced in braille from outside

sources could take several months. It may be necessary to arrange to have the material shipped in installments sequenced to follow the syllabus and, even then, students should be asked to make requests as soon as faculty have made their selections.³

The policy should identify who should receive requests for alternate media and direct other faculty and staff who may receive requests to forward them to the designated individual. Although it need not be spelled out in the policy itself, colleges should also identify in advance the person or persons at the college who will be responsible for the actual production of alternate media or for obtaining it from outside sources. Those persons should be familiar with these guidelines, know how to produce or obtain all types of alternate media as quickly as possible, and have readily available the equipment, materials, and/or outside resources they will need.

Policies should include methods of informing students, faculty, staff, and the general public about the availability of materials in alternate media and the process to be used to make requests. Publications and documents should contain a brief notice indicating that the material is available in alternate media and who should be contacted to obtain it.

Colleges should also consider preparing some basic materials in alternate media even without a specific request. This is most appropriate for materials that would be of interest to a broad audience, particularly where such materials are available on demand to nondisabled individuals. For example, the college catalog and schedule of courses should be available in electronic text suitable for use with screen reading software. It would also be desirable to have these materials formatted and proofed for producing hardcopy braille. Then, if a request for braille is made, it can be produced relatively quickly. However, if no one needs the catalog or course schedule in braille, the college will avoid the full expense of producing it and will not need to deal with storing bulky unneeded materials.

E. TYPES OF ALTERNATE MEDIA

At this point, it may be useful to briefly discuss the various types of alternate media and the advantages and disadvantages of each.

1. Audio/Readers

Providing materials in a recorded audio format is one method of making information accessible to persons who are blind or visually impaired. Many individuals with learning disabilities also use materials in audio format because they find it

³ This will mean that colleges will be beginning to process requests before the class begins and perhaps even before the student has registered for the class. Colleges may wish to impress upon students that changing their plans after work has begun will be expensive and disruptive to the program. However, colleges are well advised to encourage and act on early requests in order to be able to provide textbooks in alternate media in a timely manner. If a student makes a request well in advance and a college does not act, it will be difficult to justify failure to have the book available in alternate media at the beginning of the class.

difficult to process printed information. Audio material is commonly recorded on cassette tapes, but it may also be stored on CD-ROM or other storage media. It is also possible to produce material in audio format by having E-text read with a speech synthesizer.

A large number of literary works and standard college textbooks are already available in audio format from organizations such as Recordings for the Blind and Dyslexic (RFB&D).⁴ Such organizations will also usually record books on request, although this may take some time.

Recorded books are generally available for free or at nominal cost.⁵ They permit students to read large volumes of material relatively quickly and easily using inexpensive and readily available equipment. However, it is difficult to convey highly technical material, especially information which uses graphic symbols or charts (e.g. mathematics, science, foreign language, economics, or musical notation) in an audio format. Also, audio tapes are not well suited for use during classroom discussion or for accessing reference works, because locating specific passages on a tape is time-consuming and cumbersome.

Readers may also be used to provide access to printed materials. *California Education Code*, Section 67300 requires the California State Department of Rehabilitation (DR) to pay for reader services for community college students who are also clients of DR. DSP&S funds may also be used to provide reader services for those who cannot obtain them from DR.

Having material read aloud may be the most convenient and efficient way for a blind or visually impaired individual to deal with short handouts or articles, materials that are time sensitive, or forms that require brief written responses. Textbooks or other longer materials can also be accessed using readers, and some individuals prefer this approach, but it will generally be desirable to record such materials for subsequent review. Ideally, this should be done in a recording studio or other quiet environment with good quality recording equipment. If audio tapes are to be used, the recording equipment should have the capability to add tone-indexing signals that can later be used to more quickly locate pages and chapter headings. Readers should be familiar with the vocabulary of the source material and the best results will be obtained by having a second person read along to monitor the accuracy of the recording.

⁴ The vast majority of the RFB&D collection is on audio tape, but RFB&D has begun to produce some books in new digital form and plans to significantly expand such offerings in the near future.

⁵ State and federal nondiscrimination laws prohibit charging a student a fee for provision of accommodations. If a college chooses to rely on an outside provider, such as RFB&D, to supply taped materials, the college will bear the responsibility to pay any fees for use of such services. However, the Chancellor's Office permits DSP&S funds to be used for this purpose.

However, it may often be difficult to find or train readers to read with sufficient accuracy, clarity, and speed, especially for more complex materials. As with recorded books, it is difficult to handle highly technical or graphically-oriented materials through use of live readers. Moreover, a student using a reader is restricted to reading when the reader is available and is always at some risk that the reader will fail to arrive as scheduled for various reasons.

2. Braille

Braille is a system of reading and writing for blind individuals. The basic unit is the braille cell. It is composed of six raised dots configured as shown below.

```
dot 1 ** dot 4
dot 2 ** dot 5
dot 3 ** dot 6
```

From these six raised dots you can get 64 possible combinations. There are many more inkprint symbols than the 64 braille symbols. For example, most computer systems handle about 96 different inkprint symbols. This problem is solved by using contractions, assigning more than one braille cell to represent certain inkprint symbols, and in some cases, by using specialized codes for unique applications. Thus, learning to read and write braille requires considerable training and practice.

Approximately 10 percent of blind and visually impaired individuals use braille. For those who are proficient in its use, braille is usually the preferred medium for reading, at least for situations where mastery of detail is required.

Braille can be quickly referenced without any equipment and can include charts, tables, simple diagrams, and a reasonable approximation of the format of a printed document. Specialized braille codes exist for representing advanced mathematics, chemistry, foreign language, and musical notation. Braille also enhances literacy, writing skills, and employability because the reader naturally learns spelling, punctuation and how printed materials are organized⁶

On the other hand, braille is bulky and most braille readers cannot read large volumes of material in braille as quickly as is possible with recorded books or synthetic speech and electronic text. Braille is also somewhat difficult and expensive to produce, but the use of computer translation software and braille printers is ameliorating this to some degree.

It is recommended that each college have the in-house capacity for producing at least short, simple braille documents. This can be done using readily available braille translation software and specialized braille printers. As of 1999, colleges

⁶ For this reason, colleges may wish to consider offering special classes in Braille. This would be an appropriate activity under the DSP&S program.

should expect to pay around \$5,000 for the hardware and software necessary for small scale in-house braille production.⁷

If funding is provided in the state budget, the Chancellor's Office plans to establish an Alternate Media Center capable of handling most requests for transcription of longer or more complex materials. This center is expected to be operational by Spring of 2001. In the meantime, braille of large or complex materials can be out-sourced to agencies and organizations which produce braille documents commercially. As of 1999, commercial production costs average about two dollars per braille page with one single spaced print page equaling approximately two print braille pages. The cost will depend, at least in part, on the nature of the material, with mathematics or other specialized materials being considerably more expensive. Production time through commercial providers can vary from days to weeks. A list of some organizations which provide braille transcription services is provided in Appendix II.

Braille documents should be printed on heavy paper stock designed for use with braille printers. (See Appendix III for suppliers of braille paper.) Documents should be formatted to preserve critical page layout elements (i.e. columns, tabular data, etc.) and proofed for accuracy. Contracts with outside sources should specify that such services will be provided. With respect to in-house production, colleges should understand that, even with the best available braille translation programs, all but the simplest documents will still require human intervention and proofreading by a trained person who reads braille.

Whenever possible, mathematics, tests, legal documents, and other materials where accuracy is crucial should be prepared by a braille transcriber certified by the Library of Congress. If such personnel are not available on staff, the transcribing may be contracted out, provided the work can be performed in a timely manner. Where accuracy is crucial and a certified transcriber is not available, other precautions will need to be taken. For example, some colleges provide a student with a test in braille and give the proctor a printed copy so he or she can provide clarification if any question arises about the braille translation.

With these caveats in mind, we have provided in Appendix IV some very basic tips on formatting braille documents that may be useful in handling simple and less critical materials.

3. Tactile Graphics

In the past, the only way to make diagrams and other graphic images accessible for blind persons was to copy them by hand using a tracing wheel which produced a line of fine raised dots. Today, many braille printers can, using specialized

⁷ The budget augmentation requested by the Chancellor's Office for fiscal year 2000-2001 would provide funding for such equipment. It is anticipated that the Foundation for the California Community colleges will organize a voluntary cooperative purchase for a package of recommended hardware and software.

almost any word processing program. Such files typically have a “.txt” extension.

One drawback to use of plain E-text is that most formatting (tables, columns, tabs, bold, italic, etc.) will be lost. In some instances it will be possible to avoid this problem by using files in other common formats such as Microsoft Word or rich text format (“.rtf”). Such files will preserve formatting and can be used by some speech output and braille translation programs. However, it is critical to confirm in advance that the hardware and software being used to access the document can handle a specialized file format.

Most text created on campus or downloaded from websites should already be available in either ASCII or one of the common word processing formats. Other proprietary formats used by publishers or manufacturers of electronic digital text may contain cryptic formatting for security purposes. If the text requires a proprietary viewer, it may be difficult or impossible to convert the file into a useable format. For this reason, colleges should henceforth avoid purchasing instructional software or other materials which incorporate such proprietary formats, unless the supplier will provide an alternative format that will support access or the college is certain it has the software, equipment, and expertise to perform the conversion.⁹

If the document is not readily available in any electronic form, it will be necessary to use a scanner to create an electronic version and then proofread it to eliminate scanning errors. This is often a time-consuming process, especially for longer documents. The passage of AB 422, which requires publishers of certain instructional materials to provide E-text, should help with this problem. Guidelines for implementation of AB 422 are set forth in Part II of this document. However, there are exceptions to the new law and there will continue to be situations in which scanning will be necessary.

If the E-text was obtained through scanning or was converted to ASCII from some more sophisticated or proprietary format, there is a high probability that some reformatting will be necessary to restore or simulate the structural integrity of the document. Maintaining or restoring structural integrity requires that the contents, headings, indices, footnotes, and other structures are accessible and provide for fast and efficient reading and comprehension. Suggestions about how to address these issues are set forth in Section K.

⁹ To avoid such problems and maximize the utility of the materials obtained, the guidelines for implementation of AB 422, which are contained in Part II of this document, recommend that all information be obtained from publishers on a CD-ROM be in either Microsoft Word, Rich Text, or ASCII format.

software, produce some simple tactile graphics. There is also a technology which allows diagrams printed on special heat-sensitive paper to be heated in a specialized device to produce raised lines and images.⁸

It must be emphasized that there are significant limitations to the use of tactile graphics. It is not possible to represent or recognize fine detail using tactile graphics. Sometimes it will be possible to overcome this problem by increasing the scale of the diagram, but this may be impractical in many instances.

4. Large Print

For those with sufficient vision, large print is often desirable. Although they are somewhat bulkier, materials in large print have all the advantages of regular print. They are relatively portable, require no special equipment, convey all the graphic and spatial information contained in the original, and can be easily referenced. Producing large print copies of materials is simple if the document is not too lengthy and is available in electronic text, although some reformatting may be necessary. However, relatively few textbooks are available in large print and those that are tend to be expensive.

One alternative to hardcopy large print is the use of a closed-circuit television (CCTV) system which permits magnification of the page being viewed. This may be equally effective for many situations, but it is not possible to move through printed material with a CCTV as quickly or easily as if it were available in hardcopy large print. Moreover, older equipment may not be very portable. Thus, use of a CCTV may not be appropriate for accessing reference works or for handling some types of in-class assignments.

5. Electronic Text

In recent years, the use of electronic digital text (E-text) has emerged as a convenient and popular method of providing access for those who cannot use standard printed materials. Partially sighted individuals can use E-text by taking advantage of built-in options within many standard software applications (e.g. adjusting font size) or through the use of specialized screen magnification software. E-text can also be used with screen reading software to output the text to a speech synthesizer or refreshable braille display. The main advantage of E-text is that it can be easily stored, can be searched and indexed, and can be converted to large print or hard copy braille through use of a translation program.

E-text exists in many formats. Plain E-text (usually known as ASCII or DOS text) is the universal standard for exchange of text documents and can be used by

⁸ Some diagrams and charts that illustrate science textbooks have already been produced using this latter technology through a special program at Purdue University: Tactile Access to Education for Visually Impaired Students. For the website address for this project, see Appendix II.

F. VERIFICATION OF DISABILITY AND FUNCTIONAL LIMITATIONS

Although some materials (such as the catalog) should be available in an accessible format on demand, in most instances the process of producing alternate media will be initiated by the receipt of a request. Once a request is received, the first step is to determine whether the person making the request has a disability which requires such an accommodation. Verifying the person's disability is permitted, but not required, under the ADA and Section 504. However, with respect to serving students, verification of disability is required if the college plans to claim DSP&S funds for serving the student. (Title 5, § 56006.) In addition, the DSP&S regulations require a determination that the student's disability results in a functional limitation which impedes the student's participation in the educational programs and activities of the college. (Title 5, § 56004.) Where a student requests materials in alternate media, this would require a showing that the student's impairment makes it difficult or impossible for him or her to read printed materials.

G. INDIVIDUAL PREFERENCE AND OFFERING ALTERNATIVES

Up to this point, the approach to handling a request for alternate media has involved the same type of analysis required in the case of any other type of accommodation issue. However, there are special considerations that must now be taken into account. By far the most significant of these considerations is the preference of the person making the request concerning the type of alternate format that will be most effective. Section 35.160 of the regulations implementing Title II of the ADA specifically states: "When determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities." (28 CFR § 35.160(b)(2).) Thus, whenever possible, information should be provided in the alternative format preferred by the person making the request (i.e. braille, audio tape, large print, electronic text).

However, if it would be unduly difficult or expensive to provide the material in the requested medium by the time it is needed, the college may offer to provide it in another medium *which would be equally effective* given the needs of the person requesting the accommodation. To determine whether a proposed alternative format would be equally effective, the proposed alternative should be compared to the format originally requested in terms of accuracy, timeliness of delivery, the "shelf-life" or longevity of the material, and the extent to which the medium is appropriate to the significance of the message and the abilities of the individual making the request. Methods which are adequate for short, simple or less important communications may not be equally effective or appropriate for longer, more complex, or more critical material.

In deciding whether a given format would be appropriate for the needs of a particular individual, factors to consider include the person's learning style (tactile, auditory, visual, or multimodal), the person's proficiency in working with the format (e.g. knowledge of braille), and, for electronic text, the extent to which necessary hardware and software is

readily available. E-text should be provided in a format that will work with commonly available access technology, but colleges should be prepared to provide access to the necessary equipment and software and training for students who may not be familiar with its use.

H. ANALYZING REQUESTS

Based on the foregoing, it is recommended that colleges use the following steps as a general guide to analyzing and responding to requests for materials in alternate media. However, it must be emphasized that this is not a comprehensive or definitive discussion of how to handle every conceivable situation that may arise. Ultimately, it will be necessary to apply the legal principles discussed above to the particular facts of each case to decide what form of accommodation is most appropriate.

1. First, whenever possible, give preference to the student's choice of media.
2. If the student wants material in audio format, the request should generally be granted because chances are this will be the easiest and least expensive approach. Such requests could be satisfied by ordering recorded books which are already available, arranging to have the book recorded by an outside organization such as RFB&D, or having material read aloud and, where appropriate, recording it on cassette tape or some other storage medium. The college could also use E-text read with a speech synthesizer, but this may not work for material containing unusual words or symbols or complex formatting.
3. Colleges should usually grant requests for braille or large print, so long as:
 - (a) the student has the training and tactile or visual acuity to efficiently use the requested material; and
 - (b) the material is already available¹⁰ or it is short and simple enough to be produced on campus or through a contract supplier in a timely manner.
4. If the student wants material in braille or large print that cannot be provided in a timely manner or would be very costly, then it would be appropriate to try to identify an equally effective substitute through collaboration between the student and the college staff person.

¹⁰ At a minimum, college staff should check the California Community College Book Exchange to see if the textbook is already available in the requested media. The Book Exchange is a web page, developed by the staff at the High Tech Training Center Unit (HTCTU), which contains a listing of books available in alternate media. DSP&S staff, librarians, and ADA Coordinators can send e-mail requests to the registry to obtain books that have been produced in alternative formats by other colleges. The registry can be accessed at URL: <http://bookex.htctu.fnda.edu>. Other sources for braille and/or large print books are listed in Appendix II.

5. If E-text is already available or can be easily obtained, it may be a good alternative to large print or hardcopy braille. Producing the hardcopy braille or large print will take time and could be costly, especially for voluminous material. However, in order to ensure that E-text will provide an equally effective alternative, the following must be taken into account:
 - (a) A partially sighted student will need a computer with software permitting print magnification.
 - (b) A blind student who is a braille reader will need a computer or notetaker having a refreshable braille display. Assuming the student has such equipment, or the college makes it reasonably available, E-text probably would be an equally effective alternative to hardcopy braille, except in situations where spatial orientation or format is important, since such information is not readily conveyed by a refreshable braille display.
 - (c) For simpler materials, or where format, punctuation, spelling, or technical detail are not crucial, a blind person may be able to use E-text with speech output as a substitute for braille. This may even be a better alternative if large volumes of information must be read quickly and the student will not be required to master or frequently refer to details in the text.
 - (d) Many students with learning disabilities will benefit from using E-text with software which reads the text aloud while highlighting it on the screen.
 - (e) In any case, the E-text will have to be free from errors and in a format compatible with the equipment being used to provide access.¹¹
6. In some limited instances use of a reader or materials in a recorded audio format may be an equally effective alternative to either e-text or hardcopy braille or large print. Normally, this is only true where the material does not contain complex formatting (e.g. literature, history, business, etc.) and a general understanding of the material is sufficient. In such cases, audio may even be a superior format when compared to hardcopy braille, where large volumes of material must be covered quickly.
7. An audio recording generally will not be an equally effective alternative to E-text or hardcopy braille or large print when:
 - (a) The material is complex or technical in nature.

¹¹ During fiscal year 2000-2001, the Chancellor's Office plans to purchase several notetakers with braille displays and house them at the HTCTU for loan to colleges with students who can benefit from their use.

- (b) The student is expected to achieve detailed mastery of the information to complete a course or participate in a program or activity.
 - (c) The student is expected to quickly review material and provide an immediate response (e.g. review the material on page 57 and there will be a quiz in 10 minutes).
 - (d) The material must be used in class or as a frequent reference source outside class.
8. Providing an alternative that is not equally effective (e.g. a physics textbook on tape instead of in braille) can only be justified if the college makes a written determination that providing the requested accommodation would either:
- (a) require a fundamental alteration in the nature of the class or other program or activity in which the individual is involved; or
 - (b) Impose undue financial or administrative burdens on the college.

I. EXAMPLES

Discussing a few examples may help to illustrate the recommended approach to handling requests for alternate media.

Example 1. A blind individual considering enrollment at the college requests the catalog and current schedule of classes in braille. Consistent with these guidelines, the college has these materials available in E-text form and offers this as an alternative. If the individual has a computer with access software/hardware, providing E-text would probably be considered an equally effective alternative and will most likely be accepted by the individual. However, if the individual does not have equipment necessary to use E-text, the braille version should be provided. In this case, allowing the person to use an electronic version on a computer at the college is probably not an equivalent accommodation because the person making the request is not yet a student and because other individuals have the option of having a catalog at home where they can refer to it frequently at their convenience. Providing the catalog in braille should not take long or involve significant additional expense if the college has already prepared the formatted braille file as suggested above.

Example 2. A member of the public using the college library requests large print versions of several novels. An effort should be made to ascertain whether large print versions of these books are available from the publisher, and if so, they should be obtained. If not, they may be available on tape and this option should

be offered to the patron. Failing this, the library would need to provide the equipment necessary for the individual to read the books with the needed magnification. This could be accomplished either through use of a CCTV or a scanner and computer with magnification software.

Example 3. A blind student taking a history course requests that both assigned textbooks be provided in braille. On further investigation, the faculty member advises that students are required to read both books, but only portions of one book will be used as the basis for testing in the class. Neither book is currently available in either braille or E-text, but they are available on tape. The college might appropriately offer to provide the taped versions and to scan and braille those portions of the one book on which the student will be tested.

Example 4. A blind student taking a geography course asks that the book be provided on audio tape, but wants maps and diagrams available in a tactile form. However, neither the taped book nor the tactile maps are readily available. The college should send the book to RFB&D for recording and, if the student is not a DR client, supply a reader to read the portions of the book which will be covered before the tapes are available. It should be possible to convert the maps and diagrams into tactile form using the Purdue University process discussed above. If this proves not to be technically feasible, the college could contract with an organization which does braille transcription and has the specialized capability to produce tactile maps.

Example 5. A student with a learning disability requests that the Career Center equip one of its computers with screen reading software and a speech synthesizer to enable her to more effectively access the Center's files containing information on career planning and employment opportunities. This is a reasonable request and should be granted, provided adaptive equipment can be obtained which is compatible with the hardware and software the Center uses. Indeed, if these guidelines are followed, the Center should already have one or more accessible workstations. If this is not the case, the adaptive equipment will need to be obtained and installed. In the interim, it may be necessary to provide the student with a reader or put material on disk so the student can access it using a computer at the High Tech Center.

Example 6. A blind student planning to pursue a mathematics degree at the University of California requests that several math textbooks for his transfer courses be provided in braille. The books are not currently available in braille and contracting to have them transcribed will cost several thousand dollars and take a few months. Assuming the student is a braille reader, there probably is no equally effective alternative to providing the texts in braille. Therefore, provided that the request is made enough in advance to make it practical, the college should arrange for the books to be transcribed.

Usually, it will be possible to arrange to have portions of the books shipped as soon as they are completed, but there may still be times when the student does not have a particular portion of the book in braille by the time it is covered in class. Under such circumstances, the next best alternative would probably be to obtain the needed portions of the book in E-text and offer to produce those portions in hardcopy braille using the college's in-house braille production capacity. In that case, it will be important to use software that can handle braille mathematics and have it carefully proofread by a knowledgeable individual. Alternatively, the college could provide the student with the E-text and access to a computer with a refreshable braille display. This probably would not be an equally effective alternative to having the book transcribed, but it might suffice as an interim measure while waiting for hardcopy braille to arrive. If the book cannot be obtained from the publisher in usable E-text format, then these latter alternatives may require scanning, proofreading, and correcting the text.

Example 7. A student in a psychology course is required to read several newspaper articles. She asks that the articles be provided in E-text so she can read them with her computer which has a speech synthesizer. More recent articles from many newspapers will already be available in E-text. If this is not the case, they can probably be scanned unless the print quality is too poor. If scanning proves impossible, the college could offer to put the material on tape. This would probably be an equally effective alternative unless the articles are to be frequently referenced in class or the student can provide a reasonable explanation why tape would not be adequate.

J. RESOLVING DISPUTES

The district policies on handling accommodation requests should set forth the procedure to be used when the student, the DSP&S or ADA coordinator, and the faculty do not all agree on the appropriate accommodation. Students should be advised of how to go about initiating this process if the student does not accept a proposal by the college to provide material in a format different than that originally requested. If the process provided in the accommodation policy still does not resolve the dispute, the individual should be advised of his/her right to file a discrimination complaint pursuant to Title 5, *California Code of Regulations*, Section 59300 et seq.

K. CONSIDERATIONS FOR FORMATTING E-TEXT AND DESIGNING SOFTWARE AND WEB PAGES

As discussed above, there are many advantages to the use of E-text, but to be useful as a method of providing accessibility, E-text must be appropriately formatted. The issues that need to be addressed in terms of formatting E-text will depend on the origin of the E-text itself.

1. Considerations for Using ASCII Text Generated by a Scanner or From Another Outside Source

When a printed page is scanned, the resulting electronic image can be saved in a variety of formats including ASCII text.¹² It is generally recommended that scanned documents be saved in the format which best preserves the “look and feel” of the original document. Although files saved in ASCII format may work well with screen reading programs, much of the formatting of the document will be lost. Depending on the nature of the document, this may or may not be a problem. For persons who are blind, some elements of page formatting such as page borders, different type sizes and fonts styles contribute little to document content. On the other hand, in some instances it may be important for the reader to know that information is presented in columns or that major headings are underlined. Such important information should be preserved in the finished document or manually restored when the scanned file is cleaned up to eliminate scanning errors.

Files in a variety of document formats, including ASCII text files, may also be obtained from other sources such as downloading from a website. In the interest of faster downloads, these files are sometimes “compressed” and must be decompressed with specialized software before the actual document file can be viewed.

File names that end with a “.txt” have no specific word processor formatting. Extra carriage returns should be filtered out before using text in a word processor. The formatting should only contain a single carriage return at the end of each paragraph, none in the body of the paragraph, and no extra ones between paragraphs.

2. Considerations When E-Text is Available in a More Sophisticated Format

Sometimes E-text will be available in a common word processor format (e.g. Microsoft Word, WordPerfect, etc.). This is usually ideal as most modern screen reading programs can directly use such files without the need to convert the material to ASCII text. However, if a student does not have the necessary hardware and software to access such files, the college will need to convert the file to plain text (“.txt”) or make available a computer equipped to handle the word processing file format.

There are also a variety of proprietary file formats that cannot be used by screen reading software. For example, documents produced by many sophisticated page layout and design programs (i.e. FrameMaker, QuarkExpress, PageMaker) or documents saved in Portable Document Format (PDF), cannot be directly used with screen readers. In such cases, it will be necessary to convert the file into a

¹² Some newer scanners produce files in Portable Document Format (PDF). Unfortunately, as discussed below, PDF files are not directly accessible and must be converted to ASCII or some other usable format.

format that is accessible.¹³ Where the screen reading software to be used will support a standard word processing file format (i.e. Microsoft Word), it will be preferable to convert to that format in order to preserve page formatting information. Of course, if conversion to a word processing format is not possible, or the screen reader cannot use such a file, then converting from the proprietary format directly to ASCII may be the only solution, despite the loss of format.

In either case, the key to conversion of E-text is maintaining the structural integrity of the instructional material, so that students with disabilities are afforded a quality learning experience. Maintaining structural integrity requires that the contents indices, and other structures are accessible and provide for fast and efficient reading and comprehension. If the file is converted from a non-accessible format, some formatting elements may be lost. If so, they will need to be restored manually.

3. Considerations for Complex Electronic Documents, Software, and/or Web Pages

Sometimes electronic text is embedded in web pages or software that also contains pictures, menu bars, hyperlinks, icons or other graphic symbols. In other cases, graphic elements, although not part of the text itself, may be incorporated in software in such a way that they must be used to navigate through the program to access the text file. Such graphical navigation elements can pose a barrier to access for persons who are blind. Screen readers cannot independently interpret graphical navigational elements unless such elements have been designed with text based alternatives.

The Chancellor's Office strongly recommends that, before purchasing new instructional media or software, colleges should confirm that the product is compatible with commonly available access equipment and software. If this is not the case, the college should purchase an alternative product that will provide accessibility, purchase the specialized equipment or software that will be necessary to make the product accessible, ask the vendor to modify the product, or be prepared to make such modifications itself. Where such materials will be developed in-house or through contractual arrangements, the college should ensure that newly developed software or electronic information resources are designed to be accessible.

Existing electronic instructional materials and software should be reviewed for accessibility and, where necessary, replaced or modified. This should be done as quickly as possible; but as noted above, the Chancellor's Office will expect that, at a minimum, it will be done when courses are reviewed every six years as part of the accreditation process.

¹³ A "plug-in" is available to permit some PDF files to be read with a screen-reader. However, this may not work with more complex documents; and if the document is saved in ASCII, formatting will generally be lost.

The following information is intended to provide practical guidance about how to create accessible electronic documents, software or webpages and how to modify existing materials or webpages that may contain webpage design graphics or other elements that would interfere with access. Further information on this subject is also contained in *Distance Education: Access Guidelines for Students with Disabilities*, distributed by the Chancellor's Office in August 1999.

4. **Considerations for Designing Software for Use by Persons Who are Blind**

Increasing the compatibility of standardized software for use with screen reading programs used by blind persons requires some modifications, such as:

- i using "Alt Tags" or alternative text to identify images used as submit buttons, bullets in lists, image maps or invisible images used to lay out a page. Alternative text does not describe the visual appearance of an image. Rather, it is used to represent the function that the image performs whether it be decorative, informative, or for purposes of layout. If alternative text is not provided, users who are blind, have low vision, or any user who cannot or has chosen not to view graphics will not know the purpose of the visual components on the page.
- ii using a special technique to make the text known to screen reading software if text is embedded in a graphic image. Provide a long description of all graphics that convey important information.
- iii using dragging system cursors (even if invisible) for highlighting or focusing techniques.
- iv using consistent or predictable screen and dialog layouts.
- v eliminating popup help balloons that disappear when the focus changes unless there is a way to lock them in place so that the focus (e.g. cursor) can be moved to read them.
- vi using single column text whenever possible.
- vii using logical names for controls, even if the name is not visible on screen (screen readers can access this information and use it to describe the type and function of the control on the screen).
- viii using keyboard access to all tools, menus, and dialog boxes.
- ix providing a draft mode, zoom, and wrap to window features.
- x Since screen readers can only read text (or give names to separately identifiable icons or tools) it is a good idea to:

- x i avoid unlabeled “hot spots” on pictures as a control scheme (unless redundant with menu selection).
- x ii avoid non-text menu items when possible or incorporate cues -- visible or invisible (screen readers can ‘see’ text that is written to screen in an invisible color).
- x iii avoid non-redundant graphic tool bars if possible.
- x iv avoid conveying important information by color alone, or make it optional. Use only colors that the user can customize, ideally through Control Panel. Use colors in their proper foreground/background combinations, unless doing so would interfere with the student’s ability to distinguish the information properly (e.g. color blindness).
- x v omit background images drawn behind text.
- x vi make applications compatible with system settings for sizes and fonts. Avoid hard coding font sizes smaller than 10 points.
- x vii provide supplemental information needed to pronounce or interpret abbreviated or foreign text. Unless changes between multiple languages on the same page are identified, and expansions for abbreviations and acronyms are provided, they may be indecipherable when spoken or brailled. For abbreviations and acronyms use either ABBR or ACRONYM with the “title” attribute to specify the expansion.

There are a number of considerations that are aimed at increasing accessibility for screen readers, such as:

- i designing all documentation and on-line help so that it can be understood by reading the text only (e.g. information presented in pictures and graphics is also presented with a description in text).
- ii ensuring that all messages and alerts stay on screen until they are dismissed.
- iii writing language in a manner which is as straightforward as possible, both on screen and in the documentation.
- iv devising simple and consistent screen layouts that are predictable. Wherever possible, follow system standards and style guides. This makes it easier for people with cognitive disabilities to predict and understand how things should operate and what they mean. For people who are blind and use screen readers to find out what is on the screen, predictable

layouts and controls are easier to figure out. Also, adaptive software manufacturers can build techniques into their software to handle the standard objects and appearances, but not unique or one of a kind implementations. Structure, label, and group information. Tables also present special problems to users of screen readers. Provide summaries for tables. Identify headers for rows and columns. Where tables have structural divisions beyond those implicit in the rows and columns, use appropriate markup to identify those divisions. Provide abbreviations for header labels.

- v ensuring that all the information on the page may be perceived entirely visually and entirely through auditory means, and that all information is also available in text.

5. Considerations for Design of Documents/Software for use by Persons with Low Vision

Students with low vision may experience a variety of situations that affect their vision ranging from poor acuity (blurred or fogged vision) to loss of all central vision (only see with edges of their eyes) to tunnel vision (like looking through a tube or soda straw) to loss of vision in different parts of their visual field, as well as other problems (glare, night blindness, etc.).

For students with low vision, a common way to access the information on the screen is to enlarge or otherwise enhance the current area of focus.

Direct accessibility of software applications for students with low vision may be increased by:

- i allowing the user to adjust the fonts, colors, and cursors used in the program to make them more visible.
- ii using a high contrast between text and background.
- iii avoiding the placement of text over a patterned background where the two might interfere with each other.
- iv using a consistent or predictable layout for screens and dialogs within the program.
- v providing access to tools, etc., via menu bar.
- vi using recommended line width information when drawing lines (if such information is provided by the system).

- vii using the system pointers wherever possible, as well as the system caret or insertion bar if one is available.

6. **Considerations for Formatting E-text to Produce Hardcopy Large Print**

Large print documents printed from electronic files should be produced using a font size of 14 point (or larger) and sans serif type faces such as Helvetica for visual clarity. Documents should be reformatted as necessary to preserve critical page layout elements. All colors should be set for maximum print contrast. Further information about formatting large print documents is provided in Appendix III.

Part II

GUIDELINES FOR IMPLEMENTATION OF ASSEMBLY BILL 422

A. SCOPE AND PURPOSE

As noted in the preface to these guidelines, Assembly Bill 422 (Stats. 1999, ch. 379), added Section 67302 to the *California Education Code* requiring that publishers of certain instructional materials provide electronic versions of those materials to community colleges so that students attending the college may have access to the materials in alternate media. (See Appendix VI for the full text of AB 422.)

The bill requires the Chancellor's Office to adopt guidelines for implementation of its provisions. Those guidelines are set forth below.

The Chancellor's Office is seeking funding for the 2000-2001 fiscal year to establish a single statewide center to handle requests for electronic versions of instructional materials under AB 422 and their conversion into alternate media for students throughout the system. However, there is no guarantee that such funding will be forthcoming from the state and, even if it is, the statewide center would probably not be operational until the middle of 2001 at the earliest. Thus, the purpose of these guidelines is to provide interim guidance to colleges about how to take advantage of the AB 422 process until a statewide center is established.

B. BASIC COVERAGE AND LIMITATIONS OF AB 422

AB 422 applies only to:

1. Textbooks and other materials written and published primarily for use by students in postsecondary instruction; and
2. Which are required or essential to a student's success; and
3. Are to be used by a student with a disability in a course in which the student is enrolled at the college.

Put another way, AB 422 does not require publishers to provide electronic versions of materials which are published for a general audience, even though they may be of use to students. Such materials might include dictionaries, encyclopedias, professional journals, and other reference works used extensively outside of higher education.

Moreover, even if a particular work is published primarily for use by students in postsecondary education, it may not be available in electronic form under AB 422 if it is not required or essential for the participation of a student with a disability in a college course. For example, if an instructor designates a textbook as "optional background reading," then the publisher would not be obliged to provide it in electronic form under AB 422. Guidelines for determining which materials are "required or essential" are provided in Section F.

AB 422 may also be of only limited value in terms of obtaining electronic versions of mathematics and science materials or "nonprinted instructional materials." The limitations on availability of these specialized materials are discussed in Sections H and I below.

Finally, it is important to keep in mind that, even when it applies, AB 422 only obliges a publisher to provide electronic text to the college. It remains the college's responsibility to provide instructional materials in an alternate media appropriate to the needs of the student. For example, if the student requests a book in braille, and it is determined that this is appropriate (pursuant to the guidelines in Part I), the college will then need to use a braille translation program to convert the electronic text supplied by the publisher into braille or arrange with an outside contractor to do this work.

C. ALTERNATE MEDIA CENTERS

Subsection (a) of *California Education Code*, Section 67302 provides that, subject to the limitations discussed above, publishers shall, upon request, provide electronic versions of printed instructional materials to the University of California, the California State University, or any community college in California. Thus, the basic structure of the law contemplates that each publisher will deal directly with individual colleges. However, at the request of the publishing industry, language was added in subdivision (g) permitting each of the systemwide offices to designate one or more "centers" to process requests for electronic versions of instructional materials pursuant to AB 422. As discussed above, the Chancellor's Office is in the process of seeking the funding necessary to establish a single statewide center to handle all such requests.

In the meantime, each college may directly contact publishers and make requests for E-text pursuant to AB 422. Although it is not required, multi-college districts may establish an alternate media center at the district office or at one of the colleges in the district to handle requests for electronic text on behalf of students attending all colleges in the district. Similarly, two or more districts may, by written mutual agreement, establish a single alternate media center to handle requests for electronic text on behalf of all students attending colleges in districts participating in the agreement. Such centers must be designated by the Chancellor's Office, so prior to requesting electronic text from any publisher, the district or districts must advise the Chancellor's Office of the area to be

served by the center and the name of the person who will serve as the liaison with publishers.

However, before considering designation as an alternate media center, a college or district should understand the additional obligations it will be assuming. *California Education Code*, Section 67302(g) makes clear that, once a center is established, publishers are only required to honor requests which come through the center. As a result, the law specifies three basic responsibilities such a center must perform:

1. The colleges designated as within the jurisdiction of a center shall submit requests for electronic versions of instructional materials to the center which shall transmit the request to the publisher or manufacturer of the instructional material.
2. Each center shall make every effort to coordinate requests with other centers. To this end, each center should check the Book Exchange on the HTCTU website before submitting a request to a publisher to determine whether the instructional material is already available in electronic form from another center. Also, each center should post on the Book Exchange a description of all instructional materials the center has in its library of electronic texts, whether obtained from publishers or created in-house.
3. Once a publisher or manufacturer has responded to a request for instructional materials by a center, all subsequent requests for these instructional materials from a college served by the center shall be satisfied by that center. This means that the center will have the responsibility for maintaining an E-text library, duplicating requested materials, and delivering copies in a timely manner. To accomplish this, the center will need the capacity for high speed duplication of CD-ROMs. This is a practical necessity since the electronic versions of most textbooks or other instructional materials will be far too large to be stored on a floppy disk.

While the law and these guidelines allow for the establishment of such centers, the Chancellor's Office anticipates that it will be simpler for most colleges to contact publishers directly until the statewide center is established. The remainder of these guidelines are written based on this assumption, but colleges or districts interested in the possibility of serving as an alternate media center may contact the Statewide Coordinator of the DSP&S Unit in the Chancellor's Office, for more detailed information. The form which must be completed to request designation as an alternate media center is provided in Appendix X.

D. CERTIFICATION OF REQUESTS

AB 422 provides that publishers are only required to supply electronic versions of instructional materials in response to a written request which is signed by the DSP&S

Coordinator or the ADA Coordinator certifying that certain conditions have been satisfied.¹⁴ Those conditions include:

1. E-text is needed in order to provide instructional materials in alternate media for a student with a verified disability that prevents him or her from using standard instructional materials;
2. The student is/plans to be enrolled or registered for a course at the college;
3. The instructional material is required or essential to the student's success in the course; and
4. The standard instructional material has been purchased by the student or on behalf of the student by the college.^{15 16}

E. SECURITY OF E-TEXT

The above conditions apply to all requests for E-text from publishers under AB 422. However, some additional conditions are applicable in instances where the college will be providing the student with direct access to the E-text, as opposed to using it to produce secondary alternate media in braille or large print that will be given to the student. In such cases, Section 67302(c) requires that "the disk or file shall be copy-protected or the college or university shall take other reasonable precautions to ensure that students do not copy or distribute electronic versions of instructional materials in violation of the Copyright Revisions Act of 1976, as amended (17 U.S.C. § 101 et seq.)." (See Appendix V for a discussion of the relevant provisions of the Copyright Act.)

At this time, the Chancellor's Office is not aware of any method for copy-protecting files or disks that will permit their continued use with screen readers or braille translation software. Unless and until such a system is available, each college should develop policies providing for sanctions to be imposed on students who improperly distribute electronic versions of copyrighted materials. Such policies could be incorporated in the student code of conduct and include penalties similar to those imposed for cheating or plagiarism. Another approach would be to cover this issue in the policy developed pursuant to Title 5, *California Code of Regulations*, Section 56010 permitting suspension

¹⁴ Of course, other staff may gather and evaluate the information necessary to prepare the certification document. The law requires only that it be signed by the ADA or DSP&S Coordinator.

¹⁵ Ordinarily, textbooks and most instructional materials will have been purchased by the student. However, the statute also covers situations where the college purchases instructional materials for use by students. The underlying concept is that, since the bill requires E-text to be provided at no additional charge, the publisher is entitled to ensure that a standard copy of the instructional material was purchased by someone.

¹⁶ In order to facilitate processing requests in advance of the beginning of a class, it may sometimes be necessary for the college to complete the certification before print books are available for purchase in the bookstore. In such cases, the Chancellor's Office recommends that the college require the student to place an order for the book before completing the certification. Then, before providing the student with the book in alternate media, the college should verify that the purchase was actually completed.

of DSP&S services to students who misuse such services. For example, such a policy might provide that a student who improperly copies E-text will be required to use it under supervision on a computer at the college, and that repeated violations will result in denying future requests for access to E-text for one year. Students must be provided with a copy of such policies when they first apply for DSP&S services and it would be advisable to again bring the provision regarding copying of E-text to the student's attention when such files are provided.

In addition, AB 422 permits a publisher to insist that a student who will directly use E-text must sign an agreement stipulating that the E-text will be used solely for his or her own educational purposes, and that s/he will not copy or duplicate the instructional material for use by others. Although the law does not require such an agreement unless the publisher so desires, colleges are encouraged to make such an agreement a standard part of the procedures to be used in cases where students are given direct access to E-text.

There are also some measures each college should take to safeguard E-text in its possession. All colleges should maintain an inventory of E-text files received from publishers. Special precautions should be taken to ensure the electronic media is stored in a safe and secure area. A regular back-up protocol and schedule needs to be devised, and at least two staff should have access to and knowledge of the process and procedures related to electronic text instructional materials. Proper means of information security should be developed which prohibit unauthorized access, modification, or misuse of the electronic text.

F. DETERMINING WHICH MATERIALS ARE REQUIRED OR ESSENTIAL

As discussed above, AB 422 only obligates publishers to provide electronic versions of instructional materials which are deemed to be "required or essential" for the student's success in the course in which he or she is enrolled.¹⁷ The statute provides that the determination of which materials are required or essential to the student's success is to be made by the instructor of the course in consultation with the DSP&S coordinator or ADA Coordinator who will certify the request. Although the law does not so require, it would also be appropriate to discuss this issue with the student. The following points should be considered in making this determination:

¹⁷ It is the opinion of the Chancellor's Office that this requirement does not apply to subsequent requests for use of E-text previously supplied by a publisher. In other words, if a college has previously obtained the electronic version of an instructional material from a publisher, when subsequent requests are made for copies of that file, it is not necessary to establish that the material is required or essential for the student who will now be using the E-text. All other requirements would still apply--the student must be enrolled in a course, have a disability which prevents using the standard instructional material, and the material must have been purchased by or on behalf of the student.

Of course, there may be some question as to whether the college is obligated to provide material in alternate media when the material is not required or essential for success in a course. For example, even though an E-text file is available, producing the material in braille might be unduly difficult or expensive and the college might offer access to the E-text as an alternative accommodation in a case where the material was not required or essential for student success. The guidelines in Part I should be consulted in analyzing specific accommodation requests.

1. Is the material in question listed as “required” in the course syllabus, Outline of Record, or other curriculum documents? If so, this will generally be conclusive. However, even where this isn’t the case, materials may be effectively required or essential in the situations discussed below.
2. Will the student realistically need to use the instructional material in the completion of course assignments which are used to evaluate the student (i.e. to determine the student’s proficiency level or assign a grade)?
3. Would it be difficult or impossible for the student to achieve his or her educational objectives without access to the particular instructional material? For example, if a student expects to major in a subject or transfer to a four-year institution in that field, he or she may need to do more than what is minimally necessary to pass a class. In such circumstances, the use of the instructional material may not be critical for every student, but it would be required or essential in order for the particular student to gain the needed experience from the course.

G. FILE FORMATS

Upon receipt of a request containing the certification discussed in Section E, AB 422 requires a publisher to supply the electronic version of an instructional material at no additional cost and in a timely manner. The statute specifies that it must be provided “in an electronic format mutually agreed upon by the publisher or manufacturer and the college or campus. Computer files or electronic versions of printed instructional materials shall maintain the structural integrity of the printed instructional material, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary.” (Cal. Ed. Code, § 67302(a).)

Many publishers use popular desktop publishing programs such as Quark Express or Page Maker to prepare text for printing. The files created by these programs cannot be used with braille translation or screen reading software. Efforts are currently underway to develop software that will allow conversion of desktop publishing files into new file formats such as Open E-book or XML which could, in turn, be converted to a format that will work with braille translation or screen reading software while largely retaining the format and structure of the original file. However, at present, this conversion process has not been perfected nor has a single format emerged as the standard for electronic text.

However, most of the desktop publishing programs used by publishers will permit saving files in Microsoft Word or Rich Text format. This format will generally satisfy the requirements of the law. Many screen reading programs, braille displays, and braille translation programs can access Microsoft Word or Rich Text files, and such files will maintain many (although not all) formatting elements created in desktop publishing programs. Moreover, most other word processors will recognize Microsoft Word files,

so such files should be usable even if a particular student will be using WordPerfect or some other word processing program.

Thus, until a better alternative is developed and readily available, the Chancellor's Office recommends that colleges begin discussions with publishers by requesting files in Microsoft Word or Rich Text format. There may, however, be circumstances where this will not completely resolve the matter. Some publishers may use proprietary software that will not produce files in Microsoft Word or Rich Text format. In other instances, the format and structure of the particular document may be such that conversion to one of these formats will not preserve the "structural integrity" of the printed document. Section 67302(e)(4) states that the term:

"'Structural integrity' means all of the printed instructional material, including, but not limited to, the text of the material, sidebars, the table of contents, chapter headings and subheadings, footnotes, indexes, glossaries, and bibliographies. 'Structural integrity' need not include nontextual elements such as pictures, illustrations, graphs, or charts."

Sometimes a simple conversion of the publisher's file to Microsoft Word or Rich Text will not produce an accessible file which retains all of the enumerated elements of the structural integrity of the original. In such cases, the college and the publisher should attempt to identify and agree upon some alternative format that will maintain the structural integrity of the printed document and still be usable with screen reading and/or braille translation software. If that is not possible, it may be necessary to require the publisher to convert the file to Microsoft Word or another usable format and then modify the converted file to reconstruct or simulate the structural elements that were lost or garbled. *California Education Code*, Section 67302(a) clearly contemplates that this may be required when it says that the file provided by the publisher must "maintain the structural integrity of the printed instructional material, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary." (Emphasis added.)

Finally, AB 422 provides a "default option" in case the publisher and the college cannot agree on an appropriate file format. *California Education Code*, Section 67302(e)(4) provides that:

"If good faith efforts fail to produce an agreement pursuant to subdivision (a) between the publisher or manufacturer and the university, college, or particular campus of the university or college, as to an electronic format that will preserve the structural integrity of the printed instructional material, the publisher or manufacturer shall provide the instructional material in ASCII text and shall preserve as much of the structural integrity of the printed instructional material as possible."

As discussed in Part I of these guidelines, there are significant limitations on the formatting that can be provided by ASCII text. Thus, it will usually be desirable for the

college to make every effort to work out an agreement with the publisher that will avoid the necessity of relying on the default option. However, the law does guarantee the availability of ASCII text (enhanced to preserve as much as possible of the structural integrity of the original), and there may be situations in which this is the best approach to providing access for the student.

H. MATHEMATICS AND SCIENCE MATERIALS

AB 422 contains two provisions which exempt publishers from having to provide electronic versions of certain types of instructional materials. One such exemption is provided by *California Education Code*, Section 67302(e)(1), which excludes from the definition of instructional materials "nontextual mathematics and science materials until the time software becomes commercially available that permits the conversion of existing electronic files of the materials into a format that is compatible with braille translation software or alternative media for students with disabilities." A careful reading of this provision reveals two important points about the scope of the exemption:

First, the exemption is time limited and dependent on the state of technology. It is the opinion of the Chancellor's Office that the exemption does not apply to any material which can be successfully converted to Microsoft Word or other commonly available word processing formats. Since such files can be used with screen reading programs and/or refreshable braille displays, technology already exists today to permit converting such materials into alternate media. Of course, whether such a conversion is possible will depend on the nature of the material and will have to be determined on a case by case basis.

Second, the exemption applies only to "nontextual" mathematics and science materials. This refers to graphs, charts, equations, diagrams, and other similar graphic elements. The exemption does not extend to the textual portions of math and science texts wherein the concepts to be taught are described in narrative form. Thus, a college could ask a publisher to provide the textual portions of a math book and then the file provided by the publisher could be edited to add in the nontextual portions that could not be directly converted. Obviously, there will be many cases where this is impractical because the nontextual elements are extensive or scattered throughout the book. However, this may be a viable option for materials that are predominantly textual in nature.

I. NONPRINTED INSTRUCTIONAL MATERIALS

The other similar exemption in AB 422 applies to "nonprinted instructional materials." These are defined to mean "instructional materials in formats other than print, and includes instructional materials that require the availability of electronic equipment in order to be used as a learning resource, including, but not necessarily limited to, software programs, video disks, and video and audio tapes." (Cal. Ed. Code, § 67302(e)(3).) Publishers are not required to comply with AB 422 with respect to nonprinted

instructional materials until technology is available to convert these nonprinted instructional materials to a format that maintains the structural integrity of the nonprinted instructional materials and is compatible with braille translation and speech synthesis software. (Cal. Ed. Code, § 67302(d).)

Of course, some nonprinted instructional materials, such as video tapes or software that uses computer graphics, are inherently visual in nature and, at the present time, there is no way to convert these materials into a format that would be compatible with speech or braille translation software.¹⁸ However, some other types of materials, such as reference works on CD-ROM, may be largely textual in nature even though they are produced and distributed in electronic form, in addition to, or instead of being printed. In such cases, it may be possible for the college and the publisher to identify a way to convert all or part of the instructional material into a file format that can be used with screen reading or braille translation software.

J. REVISING FILES RECEIVED FROM A PUBLISHER

For the reasons discussed above, it should be clear that there may be many situations in which a college will not be able to fully discharge its obligations under the law by simply passing on the file received from the publisher. If too much of the structural integrity of the original document has been lost, the E-text (or braille or large print produced from it) may be unusable or deficient. Should this occur, despite the best efforts of the college to obtain usable files from the publisher, the college will have to take steps to ensure that the student receives a usable version of the document. This may necessitate human intervention to reconstruct or simulate elements missing from the file. In some cases, it may even be necessary to scan all or part of the document and use the scanned text to supplement the file provided by the publisher.

Again, the point is that the college has an obligation under federal and state law to make instructional materials available in alternate media. AB 422 may make it possible, in some cases, to obtain E-text that will allow the college to quickly and easily discharge its responsibility. But, where that isn't the case, the college will have to do whatever is necessary to produce the document in usable alternate media.

K. RECOMMENDED PROCESS FOR HANDLING REQUESTS

The following is a suggested step-by-step approach to handling a request from a student that requires obtaining E-text from a publisher pursuant to AB 422. Colleges are not required to follow the precise details of this process, provided the basic requirements of the law are satisfied.

¹⁸ There is a technique, known as descriptive video, which can provide access to video tapes for individuals with visual impediments. The tape is copied and a narration track is added on which a narrator describes visual scenes during natural pauses in the dialog. Publishers are not required to provide this service under AB 422, but colleges can and should contract with an appropriate commercial service to have video tapes narrated.

1. The bookstore manager sends a letter to all publishers ¹⁹advising them of the requirements of AB 422 and indicating that they should expect to receive such requests directly from either the DSP&S coordinator or the ADA Coordinator. (See Appendix VII for a sample letter.) The bookstore also includes in book purchase contracts with publishers a provision requiring electronic text to be available on request. ²⁰
2. Using appropriate college procedures, a student requests that instructional materials be made available in alternate media.
3. The DSP&S (or ADA Coordinator) determines that E-text is the appropriate medium for use by the student or that E-text will be needed to produce materials in the appropriate medium (e.g. braille or large print). If so, the student is asked to provide information necessary to satisfy the requirements of AB 422--that the student has a disability which prevents using standard instructional materials, that the student is or will be registered/enrolled in a course at the college, that the student has ordered/purchased the instructional material or it is being otherwise purchased, and that the instructor of the course has determined that the instructional material in question is required or essential to the successful completion of the course. ²¹ A suggested form for collecting necessary information from the student is provided in Appendix VIII.
4. The DSP&S (or ADA Coordinator) determines whether the instructional material is already available through the HTCTU Book Exchange or from some other source. If so, the source is contacted and a copy is obtained.
5. If it will be necessary to obtain the E-text from the publisher, the DSP&S or ADA Coordinator completes the certification required by AB 422 and forwards it to the publisher. (See Appendix IX for a suggested form.)
6. DSP&S (or the ADA Coordinator) works with the publisher to agree upon a format for the E-text which will be compatible with screen reading or braille

¹⁹ The Chancellor's Office will contact major publishers of instructional materials and request that each publisher designate statewide or regional representatives to whom requests should be directed. Such contact information as is provided by publishers will be placed in a database accessible through the HTCTU website (<http://htctu.fnda.edu>).

²⁰ This is not required by AB 422, but colleges would have discretion to require such a provision if they wish. This may be most appropriate where the bookstore is ordering relatively large numbers of commonly used books or materials. Such a provision might read as follows: "In accepting this order, (name of publisher) agrees that it will provide, upon request, an electronic version of the material being purchased for use in accommodating the needs of students with disabilities consistent with the requirements of California Education Code Section 67302."

²¹ As discussed above, it is the view of the Chancellor's Office that the "required or essential" test need only be satisfied when the electronic version of an instructional material is first requested from the publisher. Thus, some requests could be processed without this information, but it is suggested that it be collected at this stage of the process to avoid further delay in those cases where it is required.

translation software and maintain the structural integrity of the instructional material.²²

7. DSP&S (or the ADA Coordinator) arranges for the E-text to be provided to the student or for production of secondary alternate media, if necessary. If E-text is given directly to the student, the student is required to sign an agreement prohibiting duplication of the material and the student is advised of the consequences of violating said agreement. Suggested wording for such an agreement is included on the sample form provided in Appendix VIII.
8. DSP&S (or the ADA Coordinator) arranges for storing a master copy of the E-text and posts a description of the material on the HTCTU Book Exchange website.

L. ENCOURAGING PUBLISHERS TO ENHANCE ACCESSIBILITY

In addition to satisfying specific requests, it is recommended that each college establish an ongoing relationship with major publishers to encourage the publishers to work toward enhancing the accessibility of their products. To this end, the college should:

1. Ensure that publishers and manufacturers of the printed instructional material are aware of disability access issues and are informed that their products are frequently used by students with disabilities. The sample letter set forth in Appendix VII is intended to accomplish this purpose.
2. Work with the publisher to identify specific product support people who are knowledgeable about making instructional materials accessible or who will be assigned to acquire training in this area. As discussed in footnote 18, the Chancellor's Office will ask major publishers to designate statewide or regional representatives to receive requests pursuant to AB 422. These individuals may not be able to deal with all access issues, but they should be able to identify those individuals within the publisher's organization who can.
3. Notify the publisher of any issues that are discovered to create difficulties with screen readers or braille translation software.
4. Encourage the publisher to have product designers address accessibility problems in the design of future instructional materials.

²² If the college is served by an alternate media center located at the district office or another college, the request would be forwarded through that center. However, for the purposes of this illustrative step-by-step process, we assume each college will be interacting directly with publishers until the statewide center is established.

Appendix I

Alternate Media Committee Members

**CHANCELLOR'S OFFICE
CALIFORNIA COMMUNITY
COLLEGES**

Ralph Black, General Counsel
Carolyn Norman, Coordinator
Scott Hamilton, DSP&S Coordinator
Peggy Tate, DSP&S Program Assistant
1102 Q Street, 3rd Floor
Sacramento, CA 95814-6511

**ASSISTIVE TECHNOLOGY
SPECIALIST AND FACULTY
RESOURCE CENTER**

Laurie Vasquez, DSP&S/Faculty Resource
Center
Santa Barbara City College
721 Cliff Drive
Santa Barbara, CA 93109-2394

ACADEMIC SENATE

Edith Conn
Ventura College
4667 Telegraph Road
Ventura, CA 93003

CHIEF INSTRUCTIONAL OFFICER

Lee Callaway, Vice-President, Instruction
Mission College
3000 Mission College Boulevard
Santa Clara, CA 95054-1897

CHIEF STUDENT SERVICES OFFICER

Dr. Wilma McLeod, VP, Student Services
Modesto Junior College
435 College Avenue
Modesto, CA 95350

**REPRESENTATIVE FROM STUDENT
ORGANIZATIONS OF THE BLIND**

Nathanael Wales
1906 Anderson Road, Apt. 228
Davis, CA 95616

STUDENT SENATE

Sergio Carrillo
Los Angeles Harbor College
1111 Figueroa Place
Wilmington, CA 90744

ASSOCIATION OF BOOKSTORES

Tom Livengood
Long Beach City College Bookstore
4901 East Carson Street
Long Beach, CA 90808

CAPED

Helene Maxwell, DSP&S Coordinator
College of Alameda
555 Atlantic Avenue
Alameda, CA 94501-2109

DSP&S

Karen Andersen, DSP&S Director
San Joaquin Delta College
5151 Pacific Avenue
Stockton, CA 9520-7-6370
Alternate: Joy Cook, Assoc. Dean (DSP&S)
Glendale College
1500 North Verdugo Road
Glendale, CA 92108-2894
Helen Elias, DSP&S Coordinator

CHIEF HUMAN RESOURCES/AAO

Jon Tyler, Director, Human Resources
Imperial Valley College
380 E. Aten Road
Imperial, CA 92251-0158

LIBRARIANS REPRESENTATIVE

Alice Grigsby
El Camino College
16007 Crenshaw Boulevard
Torrance, CA 90506-0002

San Diego City College
1313 - 12th Avenue
San Diego, CA 92101

HIGH TECH CENTER TRAINING UNIT

Carl Brown, Director
De Anza College
21050 McClellan Road
Cupertino, CA 95014

Dr. Catherine Campisi, former Dean of Student Services with the Chancellor's Office, left the agency in December 1999 to accept an appointment as Director of the California Department of Rehabilitation. Although she is no longer with the Chancellor's Office, she contributed significantly to the work of the Task force and the development of these guidelines.

Appendix II

Alternate Media Resources

Braille Resources

Dozens of commercial braille production companies are available to colleges wishing to outsource. Many of the resources have Web addresses and accept electronic submission of materials to be brailled. Prices, production times and quality vary.

National Braille Press
88 St. Stephen Street
Boston, MA 02115
Phone: (617) 266-6160
Toll-free: (800) 548-7323
Fax: (617) 437-0456
<http://www.nbp.org/>

The American Printing House for the Blind, Inc.
1839 Frankfort Avenue
Mailing Address: P.O. Box 6085
Louisville, Kentucky 40206-0085
U.S.A.
Phone: (502)-895-2405
Toll Free Customer Service: (800)-223-1839 (U.S. and Canada)
Fax: (502)-899-2274
<http://www.aph.org/contact.htm>

Braille Institute
741 N. Vermont Avenue
Los Angeles, CA 90029
(323) 663-1111
FAX: (323) 663-0867
<http://www.brailleinstitute.org/Press.html>

Educational Transcription Center (ETC)
Ventura College
4667 Telegraph Road
Ventura, CA 93003
(805) 648-8927
<http://www.etcbrille.org>

Braille Transcribers
<http://www.spedex.com/directories/braille.htm>

Braille Jymico Inc.
<http://www.braillejymico.qc.ca/products.htm>

NMSU List of Braille Transcription Resources
http://www.nmsu.edu/Resources_References/access/public_html/trans.html

Quik-Scrybe
<http://www.quikscrybe.com/>

Large Print Resources

Braille Institute
Los Angeles Sight Center (323) 663-1111
Desert Center (760) 321-1111
San Diego Center (619) 452-1111
Santa Barbara Center (805) 682-6222
Orange County Center (714) 821-5000
Youth Center (213) 851-5695
<http://www.brailleinstitute.org>

Library Reproduction Service (LRS) -1 (800) 225-5002
lrsprint@aol.com

American Printing House for the Blind (502) 895-2405
"LOUIS" Database search resource for braille, large print,
sound recordings, audio, and computer
www.alph.org

Other Alternate Media Resources

California Community Colleges Alternate Media Book Exchange

The Book Exchange is a web page, developed by the staff at the High Tech Training Center Unit (HTCTU), which contains a listing of books available in alternate media. DSP&S staff,

librarians, and ADA Coordinators can send e-mail requests to the registry to obtain books that have been produced in alternative formats by other colleges. The registry can be accessed at: <http://bookex.htctu.fhda.edu>.

Recording for the Blind and Dyslexic (RFB&D)

RFB&D is a national non-profit organization that serves as the nation's educational library for people that cannot effectively read standard print because of a visual, perceptual, or physical disability. Information is provided in recorded and computerized formats at every academic level.

<http://www.rfbid.org>

TAEVIS Online, Purdue University

TAEVIS Online is an electronic library containing tactile diagrams. These diagrams, redrawn to tactile specifications are created from college-level course material and can be used to transmit visual information such as that found in graphs, chemical structures, and biological drawings.

<http://www.taevisonline.purdue.edu>

American Thermoform Corporation

2311 Travers Avenue

City of commerce

Ca. 90040

(800) 331-3676

(213) 728-8877 (fax)

American Thermoform Corp. is a major California-based supplier of braille paper and related supplies. Braille paper is available in various widths and in weights suitable for both draft and final documents.

<http://www.atcbrleqp.com>

HTCTU Book Exchange (De Anza Community College)

<http://htcoffl.htctu.fhda.edu/tango/bookex/bookex.html>

Organizations Involved in the Development of Alternate Media Standards

DAISY

The DAISY Consortium is the worldwide coalition of libraries and institutions serving print disabled persons, developing the open standards, tools, and techniques for the next generation of "digital talking books"

<http://www.daisy.org>

CAST

CAST is a not-for-profit organization whose mission is to expand opportunities for individuals with disabilities through the development of and innovative uses of technology. CAST pursues this mission through research, product development, and work in schools and educational settings that further universal design for learning.

<http://www.cast.org>

Appendix III

BRAILLE INSTITUTE EDUCATION AND AWARENESS

A Guide To Large Print For People With Low Vision

Many people with visual impairments beyond those correctable by prescription lenses still read, often with the assistance of special aids such as lighting or magnification devices. People with reduced sight often find that conventional print appears blurred, dim and very difficult, if not impossible, to read. Central damage to the retina, for example, prevents some people from seeing small print clearly and reduces their ability to move their eyes in the ways needed for reading. Text can be made more legible for some of these readers through the use of large print. There are many factors to consider when producing large-print material, and it is important to note that the variety of visual impairment and subsequent impact on the ability to read is extensive.

CONTRAST: Text should be printed with the highest possible contrast. **Use of boldface type generally provides greater legibility, as the letters are darker and thicker.** Black or dark blue inks are preferable to lighter colors. Color backgrounds generally should be avoided, although some studies suggest that black ink on a bright yellow background is easy to read. Buff, cream or light yellow backgrounds usually are acceptable, but not dark or bright color backgrounds. Some visually impaired people are unable to distinguish type at all with black ink on a dark red background.

REVERSE type—“white” type on a dark background—improves readability for some. Reverse type often is an available option with some computers and special closed-circuit cameras used for reading, and might be good for some signs or other items with limited text. Backgrounds should be solid.

SIZE: Type often is measured in points and should be as large as practical.

Text should be 14 points or larger, preferably 18 points.

Headlines should be at least 24 points, larger if possible.

LEADING: The spacing between lines of text, called leading, should be greater than that traditionally used in regular text. Many people with low vision have difficulty finding

the beginning of the next line when reading if the lines of type are too close together. A ratio of 150 percent (12-point type receives 18-point leading) is a good guideline for text.

STYLE: An ordinary typeface, such as this one (Helvetica), a sans-serif font (one without the fine lines projecting from the main strokes of letters found on some fonts, such as Palatino or Times, usually is the best choice for large print. Other styles of type frequently used in regular print are not easily read by people with low vision. These include ALL CAPS, SMALL CAPS, *italics* and ornate, decorative fonts like this. Text should be in Upper and Lower Case, with wider spacing between lines, for maximum readability.

LETTER SPACING: The spacing (track) between individual letters on each line should be wider than usual whenever possible. Text with close letter spacing is particularly difficult for partially sighted readers who have central visual field defects.

MARGINS: Extra-wide binding margins are very helpful in large-print books and other bound material because they make the volumes easier to hold flat. Many visual aids, such as stand and video magnifiers, are easier to use on a flat surface.

PAPER: Paper with a glossy finish can interfere with legibility because it tends to catch and reflect the glare of lights in a room. Glare is a common problem for many readers who are partially sighted. Print on paper with a matte (dull) finish whenever possible. Those wishing to use recycled paper will find a good selection of paper stock. Ink type—petroleum-based versus soy-based—is not a factor.

ALIGNMENT of text, hyphenation of words and other factors can slow a reader who is visually impaired and are worth considering when producing materials for this audience. Text created “flush left” is easiest to read. Paragraphs indented too far (.125 inches is a suggested maximum) might be replaced by paragraphs with extra space between them.

Text that is centered is harder to follow because the reader must search for the start of each line.

Text created “flush right” also is a potential problem.

Text that is “justified” appears to create no special problems, although many computer programs typically compact some type when this alignment is used, which can reduce the readability. Justified type also uses a lot of hyphenation, which can slow the reading process for someone who is visually impaired to a greater degree than it does for sighted readers.

When producing large-print materials for people with reduced sight, keep the above principles in mind and your readers will be able to make full use of their remaining vision.

Los Angeles Sight Center (213) 663-1111 • Desert Center (760) 321-1111
San Diego Center (619) 452-1111 • Santa Barbara Center (805) 682-6222
Orange County Center (714) 821-5000 • Youth Center (213) 851-5695
www.brailleinstitute.org

Appendix IV

FORMATTING BRAILLE DOCUMENTS

Today, most braille is produced using braille translation software to convert E-text into a format that can be printed with a braille printer. For documents involving primarily straight text (those that do not include mathematics, foreign language, computer code, etc.), these programs will generally produce an accurate word-for-word translation, but the formatting of the document will almost always require human intervention.²³

The Library of Congress establishes standards for braille transcription and certifies transcribers. It is recommended that, whenever possible, colleges hire or contract with certified braille transcribers, or organizations which employ such transcribers, to produce braille materials. However, a person well versed in the rules for formatting braille and the use of a translation program may be able to produce reasonably good quality braille documents even without Library of Congress certification. The guidelines set forth below are by no means a thorough treatment of the subject and following them will not eliminate the need for proper training. However, they should help college staff avoid some of the more obvious pitfalls of braille production.²⁴

1. Contractions

Braille only has one set of letters. By itself, a braille letter is assumed to be in lower case. To show an uppercase letter, put the capitalization indicator (dot 6) in front of a braille letter. To show an uppercase word, you put two capitalization indicators in front of the word.

The number sign (used to indicate an occasional number in a text document²⁵) is dots 3-4-5-6. This symbol comes just before the number.

An important thing to realize about braille is that you cannot write the dot patterns smaller or larger. An 11-1/2 by 11 inch piece of braille paper contains about 900 braille cells. This cause braille volumes to be much bulkier than inkprint.

²³ As noted earlier, there are special braille codes for mathematics, musical notation, computer code, etc. There are even some computerized translation programs that can produce these specialized types of braille. However, discussion of formatting considerations for such materials is beyond the scope of these guidelines. In most instances, colleges will want to contract out for such work unless specially trained staff are available to perform the transcription.

²⁴ The material which follows has been adapted from information provided by Braille Planet, a company which developed and sells some of the leading braille translation programs. The California Community Colleges Chancellor's Office gratefully acknowledges the work of Braille Planet in creating this excellent overview of braille.

²⁵ The number sign is not used in Nemeth Code which is the system used for braille mathematics.

To reduce the bulkiness of braille there is a system of braille contractions, or abbreviations known as Grade II Braille.²⁶ For general text production, materials should be provided in Grade II Braille. Grade II Braille is the format most commonly used by persons who are blind.

A braille contraction is a combination of one or more cells used to shorten the length of a word. For example, to write the word "mother," you would use a two-cell contraction rather than spelling out the word "mother." Just because a contraction can be used does not mean it should be used. The word "chemotherapy" contains the sequence "mother." Some braille translation programs are smart enough to know not to use the contraction for "mother" in "chemotherapy" (most of the braille rules are based on pronunciation; you do use the "mother" contraction in "smother," since this is pronounced like "mother").

In braille, if you have the letter "d" with a space or punctuation on either side, the "d" stands for the word "do." To show you really mean the isolated letter "d," precede it with a braille cell called the letter sign, dots 5-6. This alerts the braille reader to the fact that the next letter is to be read as a letter of the alphabet rather than an abbreviation.

Decoding braille by comparing inkprint and braille sequences can be tricky. The words "to," "into," and "by" are jammed up against the next word in braille. The words "a," "the," "for," "of," and "and" within braille are single cells which can be jammed up against each other. For example, "with" is a single cell with spaces on either side, but "with the" comes out as two cells jammed together. Numbers use the number sign followed by the letters a-j (312 comes out as #cab). One braille symbol means "dis" if it shows up in the beginning of a word, means "dd" if it shows up in the middle of a word, and is used for the period punctuation symbol if it shows up at the end of a word.

2. **Basic Page Formatting**

Another component of braille is format. When material is laid out on paper for the sighted reader, it is done so for visual effect. The reader is attracted to what is pleasing to the eye. However, in braille the object is maximization of space. Due to the bulkiness of braille volumes, you want to put as much material as possible on the page, while at the same time maintaining readability.

According to the Library of Congress, there are certain criteria for the output page. A page of braille contains a maximum of about 40 characters per line and 25 lines per page. For normal literary format, the braille page number appears at the upper right-hand corner of each page. However, you may need to change these values according to the specifications of your braille.

²⁶ Grade I Braille does not contain any contractions (abbreviations), but it does represent capitalization, numbers, and punctuation with the correct braille symbols. Grade I Braille is used only for specialized applications where the braille contractions might be confusing, such as in spelling lists.

Because of the physical (rather than visual) nature of braille, format standards are especially important. Small differences in where text is placed on the page can tell the braille reader a lot about what they are reading. In any braille format, with or without a braille translation program, certain elements are especially crucial components of page layout. These include treatment of indent and runover, braille page numbers, inkprint page indicators, and running heads.

One of the major differences between braille and print format pertains to paragraphs. Rather than having an indent of five spaces, braille paragraphs have a two cell indent. The first character of the paragraph begins in cell three. There are no blank lines between paragraphs. Except in special circumstances, you do not put two or more spaces in a row in braille. Thus only one space is used between sentences.

When material is underlined or emphasized in print, there are different ways of indicating it. In braille there are italics marks which indicate something is being emphasized. A special symbol of dots 4-6 is placed before each word to be emphasized if there are three or fewer words in a row. If four or more words are emphasized, a double italics sign (dots 4-6, dots 4-6) is placed before the first word. A single italics sign (dots 4-6) is placed in front of the last emphasized word. Please note that you do not show all uses of inkprint emphasis in braille. Emphasis is only used in headings when it is necessary to preserve the distinctions shown in inkprint.

3. **Indent and Runover**

Instructions for braille transcribing often say indent to cell #. The farthest left position in which a cell may appear is cell 1. The farthest right position ranges from cell 30 to cell 40, depending on the carriage width of your braille.

The placement of the first cell in a paragraph is called the indent. When transcribing instructions say, "indent to cell 3," put the first cell of that segment in cell 3, regardless of where the preceding line began. The position at which all subsequent lines of the same segment begin is the runover. When instructions say, "runover to cell 1," begin all subsequent lines of that segment in cell 1. If instructions say, "indent to cell 7, runover to cell 5," begin the first line of that segment of text in cell 7, and all subsequent lines in cell 5.

Sometimes the indent is a smaller number than the runover, as in, "indent to cell 1, runover to cell 5." In print, this is called outdenting, or a hanging indent. In braille, the position of the first cell of a segment of text is always called the indent, regardless of whether it is to the left or the right of the remaining text.

Another common braille instruction is block, as in, "block to cell 5." This simply means that the indent and the runover are equal to each other. It is the same as saying, "indent to cell 5, runover to cell 5."

4. **Headings**

There are three kinds of headings in braille: major headings, minor headings, and paragraph headings.

A major heading is centered, with a blank line before the heading, and a blank line after it. Some braille groups do not put a blank line after a major heading. Technically, this is a violation of the rules for braille.

A minor heading is blocked to cell five. This means that the heading starts on the fifth cell of the line. Any runover also starts on the fifth cell of the line. Usually, there is a skipped line before a minor heading, but not after a minor heading.

A paragraph heading is a line or phrase in italics (or some other emphasis) that labels a paragraph and is immediately followed by text on the same line. If this is done in inkprint, do the same in braille, using italics.

Braille rules require that there be at least one line of body text after a heading or headings on the same page. If there is not enough room on the page for the heading(s) and a line of body text, then the heading(s) need to be postponed to the top of the next braille page.

Before you start a braille project, you need to structure the document. You need to analyze how many levels of headings there are. You need to decide which of these should be done as a major heading, and which should be done as a minor heading.

5. **Braille Page Numbers**

As in print, each physical page in a braille volume is given a sequential page number. This braille page number merely orders the pages in the book. It does not provide the reader with any information about the pagination of the inkprint original. The braille page numbers appear in different spots in different formats.

6. **Print Page Indicators**

Many braille formats consider the braille reader's need to know where each inkprint page begins. When required, inkprint page indicators appear in addition to the sequential braille page numbers. Textbooks are one instance where this information is essential. With it, the braille reader can follow class discussion, locate homework assignments, and generally keep up with the users of the inkprint original.

A single print page usually occupies several braille pages. For example, if inkprint page 87 is found on three braille pages, then these are marked with inkprint page indicators 87, a87, and b87.

Inkprint page indicators are also extremely useful when transcribing anything that has a table of contents or an index. When inkprint page indicators are not included on the

braille page, indexes and such must be completely rewritten to refer to the braille page numbers. When inkprint page indicators are included, then page numbers may be transcribed exactly as they appear in print.

7. **Running Heads**

Many braille formats require that the title of the work being transcribed appear on the first line of every page, with an appropriate page number. When the title is too long to fit on one line, it is abbreviated. The running head never uses more than one line.

8. **Literary v. Textbook Format**

Whenever you begin a new transcribing project, with or without a braille translation program, there is some planning to do before you start data entry. There are a number of things to look for in the first scan through the book: check to see if there are a large number of foreign words, a table of contents or index, and graphs or pictures in the book.

One of the first things you must decide is whether to use textbook or literary format. Here are some guidelines for making this decision. Textbook format uses inkprint page indicators; literary format does not. When there is any possibility that the braille reader needs inkprint page indicators, use textbook format. Both formats may be used with or without running heads. Textbook and literary formats are also different from each other in the way they handle preliminary pages, indexes, and certain special cases such as tables and graphs.

In general, literary format allows the transcriber a certain amount of latitude. The overriding concern of textbook format is to represent things in braille EXACTLY as they appear in print. Anything added or omitted in the transcribing process must be explained in a transcriber's note.

9. **Literary Format**

In literary format without a running head, text appears on every line of the braille page. The braille page number appears in the rightmost cells of the first line, with at least three blank cells before the number. Text on the first line must break to allow room for this.

Literary format with a running head has text on lines 2 through 25. Line 1 begins with at least three blank cells, followed by the running head, at least three more blank cells, and the braille page number.

10. **Textbook Format**

The major difference between textbook and literary formats in the main body of text is inkprint page indicators. Textbook format has them; literary format doesn't. For textbook format with no running head, text appears on every line. On line 1, the inkprint page indicator appears in the rightmost cells with at least three blank cells before it. The

braille page number appears in the rightmost cells of the last line on the page. Again, at least three blank cells are placed before the braille page number.

Textbook format with a running head has text on lines 2 through 25. Line 1 begins with at least three blank cells, followed by the running head, at least three more blank cells, and the inkprint page indicator. Line 25 breaks the text to allow room for three blank cells and the braille page number at the end of the line.

Appendix V

Relevant Provisions of The Federal Copyright Law

Copyright Law Amendment
PL 104-197, December 1996

BACKGROUND

The free national library program of reading materials for visually handicapped adults administered by the National Library Service for the Blind and Physically Handicapped (NLS), Library of Congress, was established by an act of Congress in 1931. The program was expanded in 1952 to include blind children, in 1962 to include music materials, and in 1966 to include individuals with physical impairments that prevent the reading of standard print.

From the beginning, this program was dependent upon the cooperation of authors and publishers who granted NLS permission to select and reproduce in special formats copyrighted works without royalty. Although many factors influence the length of time it takes to make a print book accessible in a specialized format, the period required to obtain permission from the copyright holder has sometimes been significant.

PUBLIC LAW 104-197

Under the Legislative Branch Appropriations Bill, H.R. 3754, Congress approved a measure, introduced by Senator John H. Chafee (R-R.I.) on July 29, 1996, that provides for an exemption affecting the NLS program. On September 16, 1996, the bill was signed into law by President Clinton.

The Chafee amendment to Chapter 1 of Title 17, *United States Code*, adds section 121, establishing a limitation on the exclusive rights in copyrighted works. The amendment allows authorized entities to reproduce or distribute copies or phonorecords of previously published nondramatic literary works in specialized formats exclusively for use by blind or other persons with disabilities.

The act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1997, sets forth the Chafee amendment as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that . . . and for other purposes, namely:

(a) IN GENERAL—Chapter 1 of Title 17, United States Code, is amended by adding after section 120 the following new section:

“SEC.121. Limitations on exclusive rights: reproduction for blind or other people with disabilities

“(a) Notwithstanding the provisions of sections 106 and 710, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.

“(b)

(1) Copies or phonorecords to which this section applies shall—

“(A) not be reproduced or distributed in a format other than a specialized format exclusively for use by blind or other persons with disabilities;

“(B) bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement; and

“(C) include a copyright notice identifying the copyright owner and the date of the original publication.

“(2) The provisions of this subsection shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.

“(c) For purposes of this section, the term—

“(1) ‘authorized entity’ means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities;

“(2) ‘blind or other persons with disabilities’ means individuals who are eligible or who may qualify in accordance with the Act entitled ‘An Act to provide books for the adult blind,’ approved March 3, 1931 (2 U.S.C. 35a; 46 Stat. 1487) to receive books and other publications produced in specialized formats; and

“(3) ‘specialized formats’ means braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities.”

(b) TECHNICAL AND CONFORMING AMENDMENT—The Table of Sections for Chapter 1 of Title 17, United States Code, is amended by adding after the item relating to section 120 the following:

“121. Limitations on exclusive rights: reproduction for blind or other people with disabilities.”

Appendix VI

Chaptered Legislation, Bill Number AB 422 (Chaptered 09/15/99)

CHAPTER 37

FILED WITH SECRETARY OF STATE SEPTEMBER 15, 1999

APPROVED BY GOVERNOR SEPTEMBER 15, 1999

PASSED THE ASSEMBLY AUGUST 26, 1999

PASSED THE SENATE AUGUST 23, 1999

AMENDED IN SENATE JUNE 30, 1999

AMENDED IN SENATE JUNE 16, 1999

AMENDED IN ASSEMBLY MAY 25, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

INTRODUCED BY Assembly Member Steinberg

(Coauthors: Assembly Members Aroner, Corbett, Kuehl, and Thomson)

FEBRUARY 12, 1999

An act to add Section 67302 to the *Education Code*, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 422, Steinberg. Instructional materials: disabled students.

Under existing law, a publisher or manufacturer of instructional materials offered for adoption or sale in California is required to comply with specified requirements, including providing to the state, at no cost, the right to transcribe, reproduce, and distribute the material in braille, large print, recordings, or other accessible media for use by pupils with visual disabilities. This right includes computer diskette versions of instructional materials if made available to any other state, and those corrections and revisions as may be necessary.

This bill would require every individual, firm, partnership or corporation publishing or manufacturing printed instructional materials, as defined, for students attending the University of California, the California State University, or a California Community College to provide to the university, college, or particular campus of the university or college, for use by students at no additional cost and in a timely manner, any printed instructional material in unencrypted electronic form upon the receipt of a written request, provided that the university or college complies with certain conditions.

This bill would require that the computer files or electronic versions of printed instructional material maintain their structural integrity, as defined, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary.

This bill would authorize the Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California to each establish one or more centers within their respective segments to process requests for electronic versions of instructional materials, as prescribed.

This bill would also require an individual, firm, partnership or corporation that publishes or manufactures nonprinted instructional materials for students attending the University of California, the California State University, or a California Community College to provide computer files or other electronic versions of the nonprinted instructional materials for use by students, subject to the same conditions for printed instructional materials, when technology is available to convert these nonprinted instructional materials to a format that maintains the structural integrity of the nonprinted instructional material that is compatible with braille translation and speech synthesis software.

This bill would provide that willful failure to comply with these requirements would be subject to sanctions under the law relating to full and equal access of disabled persons to public accommodations.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 67302 is added to the *Education Code*, to read:

67302. (a) An individual, firm, partnership or corporation that publishes or manufactures printed instructional materials for students attending the University of California, the California State University, or a California Community College, shall provide to the university, college, or particular campus of the university or college, for use by students attending the University of California, the California State University, or a California Community College, any printed instructional material in an electronic format mutually agreed upon by the publisher or manufacturer and the college or campus. Computer files or electronic versions of printed instructional materials shall maintain the structural integrity of the printed instructional material, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary. The computer files or electronic versions of the printed instructional material shall be provided to the university, college, or particular campus of the university or college at no additional cost and in a timely manner, upon receipt of a written request that does all of the following:

- (1) Certifies that the university, college, or particular campus of the university or college has purchased the printed instructional material for use by a student with a disability or that a student with a disability attending or registered to attend that university, college, or particular campus of the university or college has purchased the printed instructional material.
- (2) Certifies that the student has a disability that prevents him or her from using standard instructional materials.

(3) Certifies that the printed instructional material is for use by the student in connection with a course in which he or she is registered or enrolled at the university, college, or particular campus of the university or college.

(4) Is signed by the coordinator of services for students with disabilities at the university, college, or particular campus of the university or college or by the campus or college official responsible for monitoring compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the university, college, or particular campus of the university or college.

(b) An individual, firm, partnership or corporation specified in subdivision (a) may also require that, in addition to the conditions enumerated above, the request shall include a statement signed by the student agreeing to both of the following:

(1) He or she will use the electronic copy of the printed instructional material in specialized format solely for his or her own educational purposes.

(2) He or she will not copy or duplicate the printed instructional material for use by others.

(c) If a college or university permits a student to directly use the electronic version of an instructional material, the disk or file shall be copy-protected or the college or university shall take other reasonable precautions to ensure that students do not copy or distribute electronic versions of instructional materials in violation of the Copyright Revisions Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(d) An individual, firm, partnership or corporation that publishes or manufactures nonprinted instructional materials for students attending the University of California, the California State University, or a California Community College shall provide computer files or other electronic versions of the nonprinted instructional materials for use by students attending the University of California, the California State University, or a California Community College, subject to the same conditions set forth in subdivisions (a) and (b) for printed instructional materials, when technology is available to convert these nonprinted instructional materials to a format that maintains the structural integrity of the nonprinted instructional materials that is compatible with braille translation and speech synthesis software.

(e) For purposes of this section:

(1) "Instructional material or materials" means textbooks and other materials written and published primarily for use by students in postsecondary instruction that are required or essential to a student's success in a course of study in which a student with a disability is enrolled. The determination of which materials are "required or essential to student success" shall be made by the instructor of the course in consultation with the official making the request pursuant to paragraph (4) of subdivision (a) in accordance with guidelines issued pursuant to subdivision (i).

"Instructional material or materials" does not include nontextual mathematics and science materials until the time software becomes commercially available that permits the conversion of existing electronic files of the materials into a format that is compatible with braille translation software or alternative media for students with disabilities.

(2) "Printed instructional material or materials" means instructional material or materials in book or other printed form.

(3) "Nonprinted instructional materials" means instructional materials in formats other than print, and includes instructional materials that require the availability of electronic equipment in order to be used as a learning resource, including, but not necessarily limited to, software programs, video disks, and video and audio tapes.

(4) "Structural integrity" means all of the printed instructional material, including, but not limited to, the text of the material, sidebars, the table of contents, chapter headings and

subheadings, footnotes, indexes, glossaries, and bibliographies. "Structural integrity" need not include nontextual elements such as pictures, illustrations, graphs, or charts. If good faith efforts fail to produce an agreement pursuant to subdivision (a) between the publisher or manufacturer and the university, college, or particular campus of the university or college, as to an electronic format that will preserve the structural integrity of the printed instructional material, the publisher or manufacturer shall provide the instructional material in ASCII text and shall preserve as much of the structural integrity of the printed instructional material as possible.

(5) "Specialized format" means braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities.

(f) Nothing in this section shall be construed to prohibit a university, college, or particular campus of the university or college from assisting a student with a disability by using the electronic version of printed instructional material provided pursuant to this section solely to transcribe or arrange for the transcription of the printed instructional material into braille. In the event a transcription is made, the campus or college shall have the right to share the braille copy of the printed instructional material with other students with disabilities.

(g) The Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California may each establish one or more centers within their respective segments to process requests for electronic versions of instructional materials pursuant to this section. If a segment establishes a center or centers, each of the following shall apply:

(1) The colleges or campuses designated as within the jurisdiction of a center shall submit requests for instructional material made pursuant to paragraph (4) of subdivision (a) to the center, which shall transmit the request to the publisher or manufacturer.

(2) If there is more than one center, each center shall make every effort to coordinate requests within its segment.

(3) The publisher or manufacturer of instructional material shall be required to honor and respond to only those requests submitted through a designated center.

(4) If a publisher or manufacturer has responded to a request for instructional materials by a center, or on behalf of all the centers within a segment, all subsequent requests for these instructional materials shall be satisfied by the center to which the request is made.

(h) Nothing in this section shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright under the Copyright Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(i) The governing boards of the California Community Colleges, the California State University, and the University of California shall each adopt guidelines consistent with this section for its implementation and administration. At a minimum, the guidelines shall address all of the following:

(1) The designation of materials deemed "required or essential to student success."

(2) The determination of the availability of technology for the conversion of nonprinted materials pursuant to subdivision (d) and the conversion of mathematics and science materials pursuant to paragraph (4) of subdivision (e).

(3) The procedures and standards relating to distribution of files and materials pursuant to subdivisions (a) and (b).

(4) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(j) Failure to comply with the requirements of this section shall be a violation of Section 54.1 of the Civil Code.

Appendix VII

Sample Letter for Initial Contact with Publishers

Date:

Publisher's Name/Address

Attn:

Dear Sir or Madam:

The purpose of this letter is to advise you that **name of college** will be requesting your company's assistance in providing legally required accommodations for students with disabilities attending (**Name of College**). *California Education Code* Section 67302 requires publishers of instructional materials to provide those materials to institutions of public postsecondary education in California in an electronic format, so that colleges can meet their obligations to provide instructional materials in alternate media to their students with disabilities. For your convenient reference, we have enclosed the applicable provisions of law.

The (**Name of College**) may, from time to time, request electronic text pursuant to this law. Section 67302 requires publishers to provide electronic files in a format which is compatible with commonly used braille translation and screen-reading software used by persons with disabilities. Therefore, we will generally ask that you provide files in **name of platform and file format**. If you believe you will be unable to provide electronic files in this format, please let us know immediately so that we can discuss other alternatives with you.

California law requires that you provide the electronic text at no cost and in a timely manner. Requests from (**Name of College**) will be forwarded from (**Name/Title of Designated Individual at the Community College**). Attached is a sample copy of the Electronic Text Alternate Media Request form which we will be using to submit these requests.

If you have any questions, please contact (**Name/Title of Designated Individual at the Community College**) at (**Insert address/telephone number/FAX/e-mail address**).

Sincerely,

(Signature of College Bookstore Manager)

Appendix VIII

Sample Electronic Text Request Documentation Form

NOTE: In some instances, satisfying a request by a student to receive instructional materials in an alternate media may require the college to obtain electronic text from the publisher or manufacturer of the instructional material pursuant to *California Education Code* Section 67302. In such cases, the accommodation request must be accompanied by a completed copy of this form with necessary documentation attached as specified below.

STUDENT INFORMATION

Name: _____
Address: _____
Telephone: _____ FAX: _____
E-Mail Address: _____ Social Security Number: _____

Providing your Social Security Number is strictly voluntary. The Privacy Act of 1974 (PL 93-574) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.) require that this notice be provided when collecting personal information from individuals. The Community College District and the State of California use information requested on this form for the sole purpose of determining whether a student is eligible to receive special services. Personal information recorded on this form will be kept confidential in order to protect against unauthorized disclosure. Portions of this information may be transferred to other entities for the purpose of determining appropriate alternate media specifications. However, disclosure to these parties is done in strict accordance with current statutes regarding confidentiality.

REGISTRATION/ENROLLMENT INFORMATION

District: _____ College: _____
Mailing Address: _____
Telephone: _____ FAX: _____

I have or will Register or Enroll in the academic term identified below:
 Fall 20-___/20-___ Spring 20-___/20-___ Summer 20-___/20-___
 Other (specify): _____

ACQUISITION OF STANDARD INSTRUCTIONAL MATERIAL IN ORIGINAL FORMAT

One of the conditions identified below must be substantiated for each request:

- I have purchased or ordered the standard instructional material (*Attach copy of original sales receipt or bookstore order form.*)
- The instructional material is supplied by the college to all students.

Signature of Instructor or Other Official

Date

- The standard instructional material has been purchased or ordered on my behalf by the Department of Rehabilitation or some other agency. (*Attach copy of sales or ordering transaction.*)
- Other (specify): _____

VERIFICATION OF DISABILITY

One of the conditions identified below must be substantiated:

I have a disability that prevents me from using standard instructional materials. Documentation verifying this disability is either:

- Attached to this form or
- On file with the DSP&S office.

Signature of Instructor or Other Official

Date

SECURITY OF ELECTRONIC TEXT

I understand that any electronic text, which may be supplied to me, is solely for my own educational purposes. I will not copy or distribute any such electronic text in violation of the Copyright Revisions Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.). I understand that failure to abide by this agreement may constitute a violation of the Student Code of Conduct, and/or of the college policy regarding responsible use of DSP&S services. I have received and read a copy of the policy on responsible use of DSP&S services and I understand that a violation of that policy, including improper distribution of electronic text, may result in suspension of DSP&S Services.

Signature of Instructor or Other Official _____
Date

COURSE INSTRUCTOR CERTIFICATION

Course Code: _____ Course Title: _____

Instructional Material Title: _____

General Description of Course Material: Textbook Workbook Other (specify) _____

Original Format of Instructional Material: Printed Nonprinted

I hereby certify that the instructional material is required or essential to the above student's success in the course in which the student is or will be registered or enrolled.

Course Instructor's Signature _____
Date

COURSE INSTRUCTOR CERTIFICATION

Course Code: _____ Course Title: _____

Instructional Material Title: _____

General Description of Course Material: Textbook Workbook Other (specify) _____

Original Format of Instructional Material: Printed Nonprinted

I hereby certify that the instructional material is required or essential to the above student's success in the course in which the student is or will be registered or enrolled.

Course Instructor's Signature _____
Date

COURSE INSTRUCTOR CERTIFICATION

Course Code: _____ Course Title: _____

Instructional Material Title: _____

General Description of Course Material: Textbook Workbook Other (specify) _____

Original Format of Instructional Material: Printed Nonprinted

I hereby certify that the instructional material is required or essential to the above student's success in the course in which the student is or will be registered or enrolled.

Course Instructor's Signature _____
Date

Appendix IX

Sample Electronic Text Alternate Media Request

Date:

Publisher's Name/Address

Attn:

Dear Sir or Madam:

The purpose of this letter is to request your assistance in providing legally required accommodations for a student with a disability attending **(Name of College)**. *California Education Code* Section 67302 requires publishers of instructional materials to provide those materials to institutions of public postsecondary education in California in an electronic format, so that colleges can meet their obligations to provide instructional materials in alternate media to their students with disabilities.

The **(Name of College)** is requesting electronic text **(specify platform and file format)** of **(Name of Instructional Material)**. The enclosed certification complies with the requirements set forth in *California Education Code* Section 67302:

The electronic text supplied by a publisher may be used with translation software to produce hardcopy Braille or may be accessed with speech synthesizers or refreshable Braille displays. In the event that the electronic text will be made available to the student, he or she will be asked to sign an agreement stipulating that the electronic text will be used solely for his or her own educational purposes, and that s/he will not copy or duplicate the instructional material for use by others. In addition, the college will take other reasonable precautions to ensure that students do not copy or distribute electronic versions of instructional materials in violation of the Copyright Revisions Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

The California law requires that you provide the electronic text at no cost and in a timely manner. We therefore request that it be supplied in the format specified above by **(Insert Date)**. If you are unable to supply electronic text in the specified format, will be unable to provide it by the date requested, or if you have any questions, please contact me at **(Insert address/telephone number/FAX/e-mail address)**.

Sincerely,

(Signature of Designated Individual at the Community College)

Sample DSP&S/ADA Coordinator Certification

- I request that **(Name of Publisher)** supply electronic text (**specify platform and file format**) of **(Name of Instructional Material)** for use by **(Name of Student)**. The electronic text is needed in order to provide instructional materials in alternate media for this student who has a verified disability that prevents him or her from using standard instructional materials.
- The student is enrolled in a course at the college or will be registered for such a course in an upcoming term.
- The instructional material is required or essential to the student's success in the course.
- The standard instructional material has been purchased by the student or on behalf of the student by the college.

Signature of DSP&S/ADA Coordinator

Date

Appendix X

STATE OF CALIFORNIA
CHANCELLOR'S OFFICE - CALIFORNIA COMMUNITY COLLEGES

ALTERNATE MEDIA CENTER (ELECTRONIC TEXT)
PROGRAM PARTICIPATION AGREEMENT FORM
AMFORM3.DOC

Date:

To: Chancellor's Office – California Community Colleges
Attn. DSP&S Coordinator
1102 Q Street – 3rd Floor
Sacramento, CA 95814-6511

From: District/College Name/Address:
Attn:

The (Name of District or College) hereby requests designation as an Alternate Media Center for the purpose of providing electronic text to (Names of Colleges to be served) for use in accommodating students with disabilities. (Name of District or College) will operate the Alternate Media Center in compliance with *Education Code* Section 67302 and will be responsible for the following functions:

- Listing any instructional materials it obtains or produces in alternate media on the High Tech Center Training Unit, Book Exchange Website to allow for the coordination of requests within the Community College system.
- Checking to see if a requested electronic text is listed on the HTCTU Book Exchange as already being available from another college or Alternate Media Center and, if so, contacting that college or center to request the text.
- Establishing back-up protocols and maintaining a library of electronic text produced by the Center or obtained from publishers.
- Forwarding electronic text supplied by a publisher to the requesting college in a timely manner. Responding, in a timely manner, to requests for copies of electronic text already in its library from any colleges identified above.
- Responding, to the extent possible, to requests for copies of electronic text in the Center's library from other Alternate Media Centers or from colleges or universities not served by the Center.
- Implementing measures designed to ensure that electronic text will not be distributed to individuals or organizations other than as provided herein.

President/Superintendent CCD

Date

Chancellor's Office DSP&S Coordinator

Date

Appendix XI

Glossary of Terms

AB 422

Assembly Bill 422 (Ch. 37, Statutes of 1999) was authored by Assemblymember Darrell Steinberg. This bill added Section 67302 to the *California Education Code* effective January 1, 2000. It requires every individual, firm, partnership or corporation publishing or manufacturing printed instructional materials, as defined, for students attending the University of California, the California State University, or a California Community College to provide to the university, college, or particular campus of the university or college, for use by students at no additional cost and in a timely manner, any printed instructional material in unencrypted electronic form upon the receipt of a written request, provided that the university or college complies with certain conditions.

Accessible formats

With reference to printed materials, accessible formats include braille, large print, audio and electronic text formats.

Accommodation

Altering existing facilities, instruction, and/or services so they are readily accessible to and usable by individuals with disabilities.

ADA

The Americans with Disabilities Act of 1990 (42 U.S.C. 12100 et seq.). This federal civil rights law guarantees and defines equal access for people with disabilities.

Alternate Media

Generally refers to text or other materials produced in a specialized format intended for use by persons with disabilities. Types of alternate media include, but are not limited to, braille, large print, audio material, certain types of electronic files, and video with closed or open captioning.

Alternate Media Center

A campus or state-wide facility for the production of text in alternate media.

ASCII text

American Standard Code of Information Interchange. ASCII provides a numerical equivalent for the letters and symbols which can be displayed on a computer screen. The most basic of all electronic text formats.

Audio format

Text materials spoken by a human reader or speech synthesizer and recorded on audio tape, CD ROM, DVD, MP3, or other electronic media.

BCP

Budget Change Proposal. This is the process used by California state agencies, such as the Chancellor's Office for the California Community Colleges, to request changes in their level of funding.

Book Exchange

A web based electronic database for retrieval of information about textbooks and other print materials available in alternate media: <http://htcoffl.htctu.fhda.edu/tango/bookex/bookex.html>.

Braille

Braille is a system of tactile reading and writing in which raised dots represent the letters of the alphabet. Braille also contains equivalents for punctuation marks and provides symbols to show letter groupings. Braille is read by moving the hand or hands from left to right along each line. Both hands are usually involved in the reading process, and reading is generally done with the index fingers. The average reading speed is about 125 words per minute, but greater speeds of up to 200 words per minute are possible.

Braille cell

The basic unit of braille is the braille cell. It is composed of six dots: the upper left dot is dot 1, the middle left dot is dot 2, the lower left dot is dot 3, the upper right dot is dot 4, the middle right dot is dot 5, and the lower right dot is dot 6. From these six dots you can get 64 possible combinations.

Braille formats

When material is laid out on paper for the sighted reader, it is done for visual effect. However, in braille the object is maximization of space. Due to the bulkiness of braille volumes, you want to put as much material as possible on the page, while at the same time maintaining readability. There are different formats for literary works and textbooks. (See below). Because of the physical (rather than visual) nature of braille, format standards are especially important. Small differences in where text is placed on the page can tell the braille reader a lot about what they are reading. In any braille format, with or without a braille translation program, certain elements are especially crucial components of page layout. These include treatment of indent and runover, braille page numbers, inkprint page indicators, and running heads.

Braille page

One single-spaced print page equals two to three braille pages.

Braille printers

Also called embossers. The devices used to produce hard copy braille.

Braille production

The process of translating, proofing, formatting and printing braille documents.

Braille translation

The process of translating inkprint or electronic documents into Grade II, Nemeth Code or other forms of braille.

Braille translation software

Specialized software capable of accurately translating text into Grade II braille and preserving simple page formatting.

California Code of Regulations

The *California Code of Regulations* (CCR) contains the regulations that have been formally adopted by California state agencies, including those adopted by the Board of Governors of the California Community Colleges.

CCTV

Television equipment used by persons with low vision to magnify inkprint and other text materials for more convenient viewing, usually of desktop size.

CD-ROM

Compact Disk - Read Only Media. CD and DVD (Digital Versatile Disk) media are high capacity storage formats which can be used to save and retrieve text, audio and video information.

Certified Transcriber

An individual trained in the proper transcription of printed materials into braille who has been certified by the National Library Service for the Blind and Physically Handicapped of the Library of Congress.

Compatible with braille translation software

An electronic text file which can be translated into braille using commonly available braille translation software. Files provided by publishers pursuant to AB 422 are required to be in such a format.

Convert the file

Generally refers to converting a file from one format to another (i.e. PageMaker to Microsoft Word).

Department of Rehabilitation

The state of California agency whose mission is to assist Californians with disabilities in obtaining and retaining employment and maximizing their ability to live independently in their communities.

Distance education

Generally refers to one of a variety of instructional delivery methods which can include one or two-way (interactive) television, web based courses, e-mail or software. In all cases, participating students attend most or all classes from home, their worksite or other location.

Dot

The smallest element of a braille cell.

Download

To copy the contents of an electronic file from one location to another. Possibly across the internet, from one location to another on a campus network or to removable media.

DSP&S

Disabled Students Programs and Services. Established in 1976 through the passage of AB 77 (Lanterman), which funded support services and instructional programs for students with disabilities in the California Community Colleges so that they can participate fully in their educational activities.

Electronic form

A digital representation of a paper form. Generally used for data collection.

Electronic text

Text in MS Word, ASCII or other proprietary format. Also called "e-text".

Electronic versions of instructional materials

Textbooks, tests, catalogs or other materials stored on floppy, zip, CD ROM, DVD or other storage media. Exact or similar in appearance to inkprint versions of the same material.

Elements

Generally refers to page formatting elements such as headings, subheadings, headers, footers, sidebars and marginalia of various types.

File format

The unique public or proprietary file storage format in which a document has been saved.

Formatting E-text

Generally refers to the process of preserving the page location or text content of titles, paragraphs, columns, sidebars, footnotes, headers, footers, graphics, etc when scanning pages or moving documents between file formats.

Grade II braille

To reduce the bulkiness of braille there is a system of braille contractions, or abbreviations known as Grade II Braille. For general text production, materials should be provided in Grade II Braille. Grade II braille is the format most commonly used by persons who are blind.

Graphics

Usually refers to charts, drawings, photographs, animated objects, or digital video.

Hardcopy

Text printed on paper.

High Tech Center Training Unit

Located at DeAnza College, a training and support facility for community college faculty wishing to acquire or improve teaching skills, methodologies, and pedagogy in Assistive and Instructional Computer Technology.

Inkprint

Text printed on paper.

Instructional material

A general term referring to textbooks, multimedia, tests, forms, class handouts or other materials written and published primarily for use by students in postsecondary instruction.

Large Print

Inkprint or electronic text displayed at a size greater than or equal to 14 point.

Literary format

A particular method of formatting literary works and other general purpose texts in braille. In literary format without a running head, text appears on every line of the braille page. The braille page number appears in the rightmost cells of the first line, with at least three blank cells before the number.

Nemeth Code

Letters in the Nemeth Code are those of standard braille, but nearly every other cell has a different meaning than in standard English braille. Nemeth numbers for the digits 1-9, 0 are the letters a-i, j except that they are dropped one row. This number definition is possible because the letters a-j are all upper cells. In SEB most of these dropped cells are punctuation marks, so a blind person learning math must learn to interpret dropped cells as punctuation marks when reading text and as numbers when reading math.

OCR

The United States Department of Education, Office for Civil Rights. This is the federal entity charged with enforcement of civil rights, including the rights of persons with disabilities, in educational institutions.

Page layout

The arrangement of text and graphics on an inkprint or electronic page.

Proofread

Within the context of alternate media, proofreading might mean, in addition to checking for errors in spelling, correcting page formatting errors, formatting braille documents so they maintain critical content design elements, or listening to the audio content of a recorded book to assure that it remains faithful to the inkprint version.

Proprietary formats

Refers to text formatting, storage and retrieval methods often used by textbook publishers and printers. Examples include Quark Express, FrameMaker, PageMaker and PDF.

Recorded books

Also known as books on tape. Thousands of popular titles and textbooks are available through Recordings for the Blind and Dyslexic and other agencies.

Refreshable braille display

When used in conjunction with screen reading software, these devices provide the text content of a document, web page or other information displayed on the computer screen in "real-time" braille.

RFB&D

Recording for the Blind & Dyslexic was founded in 1948 to help blind and disabled veterans take full advantage of the GI Bill educational benefits. RFB&D is a volunteer organization whose sole purpose is to provide educational materials in recorded and computerized formats at every academic level. RFB&D materials are for all people unable to read standard print because of a visual, perceptual, or other physical disability.

RTF

RTF (Rich Text Format) is a file format that lets you exchange text files between different word processors in different operating systems. For example, you can create a file using Microsoft Word 97 in Windows 95, save it as an RTF file (it will have a ".rtf" file name suffix), and send it to someone who uses WordPerfect 6.0 on Windows 3.1 and they will be able to open the file and read it. (In some cases, the RTF capability may be built into the word processor. In others, a separate reader or writer may be required.)

Scanning

The process of imaging printed pages with a desktop or commercial scanner, using optical character recognition software to convert the scanned pages to text, correcting text misrecognition errors and reformatting as necessary to preserve the structural integrity of the document.

Screen reading software

Software used by persons who are blind or have learning disabilities to verbalize the text contents of the computer screen. Many screen reading programs are highly sophisticated and capable of reading very complex page formats and web pages.

Specialized formats

See proprietary formats.

Speech synthesis software

Software used with a computer's sound card to reproduce near-human sounding speech.

Speech synthesizer

Hardware/software used by speech synthesis software to produce near human sounding speech.

Structural integrity

Structural integrity' means all of the printed instructional material, including, but not limited to, the text of the material, sidebars, the table of contents, chapter headings and subheadings, footnotes, indexes, glossaries, and bibliographies. 'Structural integrity' need not include nontextual elements such as pictures, illustrations, graphs, or charts.

Tables

A text formatting protocol used to arrange information in rows and columns.

Tactile graphics

Graphic images produced as raised images. Such raised images may be produced by a device using heat and heat-sensitive paper. This enables high quality tactile graphics, suitable for blind and visually impaired people, to be made quickly and easily. Some tactile graphics can also be produced using a braille embosser.

Tapes

Refers to audio tapes of books or other materials read aloud by a human reader or by a speech synthesizer.

Textbook format

The format used for producing textbooks in braille. The major difference between braille textbook and braille literary formats in the main body of text is inkprint page indicators. Textbook format has them; literary format doesn't. For textbook format with no running head, text appears on every line.

Title 5

That portion of the *California Code of Regulations* governing the administration of education in the state of California. The regulations of the Board of Governors of the California Community Colleges appear in Division 6 of Title 5.

Transcription

To move the content of a document from one format to another as in transcribing the content of audio tape to text or from print to braille.

Web Pages

Documents formatted in one of several page layout or "mark up" languages including html, dhtml and xml.

Word processing formats

Refers to public and proprietary software systems used for embedding non-ASCII characters into a document for the purpose of formatting the appearance of information on the computer screen. Examples of word processing formats include Microsoft Word and WordPerfect.

Zip files

Zip files are “archives” used for distributing and storing files. Zip files contain one or more files. Usually the files “archived” in a Zip are compressed to save space. Zip files make it easy to group files and make transporting and copying these files faster.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ATTACHMENT 6

August 21, 2001

REGION IX
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, California 94102

Thomas J. Nussbaum, Chancellor
Chancellor's Office
California Community Colleges
1102 Q Street
Sacramento, California 95814-6511

(In reply, please refer to Docket Number 09-97-6001.)

Dear Chancellor Nussbaum:

This letter signifies resolution of Docket Number 09-97-6001, a compliance review under Title II of the Americans with Disabilities Act of 1990 (Title II) and Section 504 of the Rehabilitation Act of 1973 (Section 504), in which OCR and the Chancellor's Office collaborated to address critical issues of first impression concerning access to print and technology by California Community Colleges students with visual disabilities. This document acknowledges the final progress report (May 29, 2001) to OCR from the Chancellor's Office, closes the above referenced case docket number, summarizes the history of this case, and specifies the actions chosen and implemented by the Chancellor's Office to resolve the issues presented in this statewide compliance review.

Introduction

The California Community Colleges constitute the world's largest community college system, with 107 colleges in 72 districts, enrolling 2.3 million students. During 1996 - 1999 the California Community Colleges system has been implementing the Telecommunications and Technology Infrastructure Program (TTIP).

Developed as a result of a 1996-1997 Strategic Telecommunications Plan through an U.S. Department of Commerce grant, the California Community Colleges TTIP is designed to be implemented in stages. The first stage of the TTIP, referred to as Technology I, was funded by the state for three years: 1996 - 1997 at \$9.3 million, 1997 - 1998 at \$18 million, and 1998-1999 at \$28 million, respectively.

Technology I was successful in using technology to link 124 sites, including the Chancellor's Office. Technology I had a systemwide focus that linked the California Community Colleges campuses together in four major areas: (1) data and Internet access via connection to the 4CNet (the statewide network in partnership with the California State University (CSU) system), (2) video conferencing capabilities at each college and district site, (3) dual satellite down-link capability (analog and digital) for each college and district office, and (4) library automation and electronic information resources.

In this environment of rapid development of technology infrastructures in the California Community Colleges system, OCR initiated this compliance review, in part to ensure that students with visual impairments were provided access to these new technological opportunities. The results of this OCR review may be attributed to the work of many individuals from all components of the California Community Colleges system, who creatively explored how to solve the problems associated with effectively serving students with visual impairments in a mainstream educational environment that is highly visual, e.g., computer-based information and Internet research tools, as well as the traditional educational instructional materials such as printed books, written examinations, typed handouts, etc. When the problem-solving process began, the solutions to some of the most difficult questions were in many instances not yet identified.

Several factors played a part in the final outcome of this review. First, the California Community Colleges system was fortunate in already having a well-established statewide center with a high level of staff expertise dedicated to supporting community colleges in providing students with disabilities access to technology (known as the High Tech Center Training Unit or HTCTU). Second, at critical junctures in the resolution process of this case, the Chancellor's Office chose to break new ground. Third, adaptive technology was sufficiently developed as to realistically offer a cost effective, viable solution for the needs of the majority of students with visual impairments. Finally, prior to this compliance review, OCR and the Chancellor's Office had a longstanding history and practice of working in partnership to successfully resolve issues concerning civil rights matters.

In short, as a result of the talent and commitment evidenced throughout the California Community Colleges system, and in particular the willingness of the Chancellor's Office and its HTCTU to provide leadership and vision, this state post-secondary system not only exponentially increased print and technology access on its campuses, but the California Community Colleges system has gone on to become nationally recognized as setting the standards for post-secondary state

systems with regard to providing students with visual impairments access to print and computer-based information.

Some of the most important accomplishments occurring during the time period of this compliance review were (1) to establish statewide those best practices already being implemented at some individual community colleges, (2) to maximize the colleges impact as consumers by negotiating in unison with vendors of adaptive technology, (3) to make receipt of technology grants from the Chancellor's Office contingent on a showing by the grantee that technology purchased would be accessible, (4) to develop statewide access guidelines for Distance Education as well as the production of Braille/electronic text (which guidelines are now used as a model nationally), (5) to require, through passage of a state law, that publishers cooperate in providing printed textbooks in an electronic format to colleges in the California state post-secondary system (thus eliminating the onerous task of scanning hard copy paper), and (6) to centralize, in one center for 107 colleges, the task of producing Braille and electronic versions of printed books/materials.

Legal Framework

OCR is responsible for enforcing Section 504 and the Department implementing Regulation at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability in programs and activities. OCR also has jurisdiction as a designated agency under Title II, and the implementing Regulation at 28 C.F.R. Part 35, which similarly requires equal educational opportunity with regard to disability in public educational institutions, including public colleges and universities. Since the Chancellor's Office and California Community Colleges receive Federal financial assistance through the Department, as public educational institutions they are subject to OCR jurisdiction under both Section 504 and Title II, and the implementing Regulations.

This compliance review examined whether students with visual impairments, particularly blind students, were accorded an equal educational opportunity by California Community Colleges, or whether they were being discriminated against on the basis of their disability [34 C.F.R. § 104.4(a); 28 C.F.R. § 35.130]. The courts have held that a public entity violates its obligations under the Americans with Disabilities Act when it simply responds to individual requests for accommodation on an ad-hoc basis. A public entity has an affirmative duty to establish a comprehensive policy in compliance with Title II in advance of any request for auxiliary aids or services. In particular, OCR considered the effect of the Chancellor's Office "methods of administration" on the ability of the California

Community Colleges educational program to accomplish their objectives with respect to students with visual impairments [34 C.F.R. § 104.4(b)(4)].

Title II of the Americans with Disabilities Act (Title II) requires a public college to take appropriate steps to ensure that communications with persons with disabilities "are as effective as communications with others" [28 C.F.R. § 35.160(a)]. OCR has repeatedly held that the term "communication" in this context means the transfer of information, including (but not limited to) the verbal presentation of a lecturer, the printed text of a book, and the resources of the Internet. Title II further states that, in determining what type of auxiliary aid and service is necessary, a public college shall give primary consideration to the requests of the individual with a disability [28 C.F.R. § 35.160(b)(2)].

In construing the conditions under which communication is "as effective as" that provided to nondisabled persons, on several occasions OCR has held that the three basic components of effectiveness are timeliness of delivery, accuracy of the translation, and provision in a manner and medium appropriate to the significance of the message and the abilities of the individual with the disability.

Survey/Self-Evaluation

On September 18, 1996, the Chancellor's Office distributed to all colleges a survey/self-evaluation prepared by OCR to assess the extent to which colleges were prepared to provide access to print and electronic information to students with visual impairments. OCR obtained a 100 percent response rate to the survey/self-evaluation - in other words, every California Community College completed and returned the survey/self-evaluation to OCR. During 1997 the results of this survey were compiled and analyzed by researchers Jamie Dote-Kwan (California State University at Los Angeles) and Jeff Senge (California State University at Fullerton), culminating in an "Analysis and Final Report of the California Community Colleges Survey and Self-Evaluation: Information Access for Students with Visual Impairments" (approximately 50 pages) received by OCR on May 11, 1998.

OCR Onsite Visits

On March 26, 1997, OCR met with the Chancellor, the General Counsel, and other Chancellor's Office staff, to notify them that OCR was beginning onsite visits to college campuses. During Spring 1997 OCR conducted fifteen onsite visits to

California Community Colleges throughout the state,¹ with the goal of completing at least one onsite in each of the ten regions. In general, each onsite consisted of six components:

First, at the High Tech Centers in the Disabled Student Program and Services (DSPS) Offices, OCR observed demonstrations of adaptive technology for the visually impaired. OCR also spoke with DSS staff regarding the availability of alternative format for printed materials such as textbooks, examinations, class handbooks, and campus publications.

Second, OCR visited outlying computer labs used by nondisabled students, both within departments (e.g., education, mathematics, business) and general "open" labs used by students to prepare course assignments. The purpose of visiting department labs and open labs was to determine the degree to which such mainstream computer labs are prepared to integrate blind students by providing adaptive technology, or whether the only means of accommodating blind students wanting access to computers is to refer them to the High Tech Center operated by the DSPS Office.

Third, on campuses that had already developed a system for promoting campuswide standardization of computer technology, OCR discussed the cost effectiveness of the campus' master technology committee/administrator addressing the issue of accessibility as early as possible when purchasing computer technology.

Fourth, at the campus library OCR shared resources available to librarians seeking to ensure accessibility to blind and low vision patrons, and inquired about the manner in which books, as well as newly computerized information such as card catalogues and CD ROM resources, were being made accessible.

Fifth, with respect to distance learning and computer networks, such as the campus LAN and the Internet, OCR spoke with pertinent campus

¹ Those colleges were Region II Sacramento City College (February 7), Region III Diablo Valley College (May 14), Contra Costa College (May 14), City College of San Francisco (May 22), Santa Rosa Junior College (June 24), Region IV San Jose City College (March 11), DeAnza College (March 11), Region V San Joaquin Delta College (May 13), Region VI Santa Monica College (April 17), Santa Barbara City College (April 21), Region VII Los Angeles City College (March 17), El Camino College (March 18), Region VIII Saddleback College (April 16), Region X San Diego City College (May 6), Palomar College (May 7). OCR also met with the President of Ventura College on October 16, 1997 to hear about its plans to establish a Braille Transcription Center.

administrators and technicians to determine what adaptive technology was being used to provide access for the visually impaired.

Sixth, at almost every campus OCR spoke directly with blind students regarding their experiences in accessing computer-based information and printed materials.

OCR Summary Report

On January 22, 1998, OCR issued its Summary Report based on the survey/self-evaluation results as analyzed in the Dote-Kwan/Senge Preliminary Report, information obtained during the OCR onsite visits, and several other sources of data collected by the California Community Colleges. The Report's conclusions included the following:

- Access to technology is recognized by California Community Colleges as a high priority for its students. Yet despite rapidly expanding technology opportunities for sighted students, students with visual impairments faced overwhelming barriers to such access.
- It is extremely expensive for community colleges to meet their legal obligations to provide communications as effective as those provided to nondisabled students when each college attempts to individually serve a handful of students whose disability requires print and computer-based information to be translated into an alternative medium. Consequently, students with visual impairments, particularly blind students, who are scattered throughout the community college system, are drastically underserved by Disabled Student Programs and Services (DSPS) Offices whose budgets are stretched thin.
- Braille proficient students are under-identified by colleges, the majority of whom are not prepared to provide timely Braille translations for examinations and classroom handouts, much less textbooks.
- Adaptive technology to eliminate most barriers facing students with visual impairments is on the market. However, use of adaptive technology requires an upfront capital outlay and specialized staff training not yet available. In many situations adaptive technology not only removes barriers to information/technology in ways personal readers do not, but in many cases adaptive technology offers long term savings over labor-intensive methods of accommodation. For

example, once translated into the proper electronic digital text, information can be cost-effectively output into a variety of alternative formats (e.g., synthesized speech, Braille, screen magnification) that will benefit not only under-served students with visual impairments but students with other types of disabilities (e.g., learning disabilities, acquired brain injury, etc.)

- Acquisition of technology and expansion into distance education, including the Internet, is occurring at an explosive rate among California Community Colleges. Failure at this time to take into account the needs of students with visual impairments will foreseeably result in substantial investment to inaccessible products and program structures, thus unnecessarily raising the subsequent cost of accommodating students with visual impairments, and in some cases precluding such accommodation altogether.
- Present methods of administration by the Chancellor's Office are failing to effectively respond to the above.

Voluntary Resolution

By letter dated January 22, 1998, OCR provided the Chancellor's Office with copies of the Summary Report and suggested nine strategies as one method for addressing OCR areas of concern. Those nine strategies were 1) undertake a systemwide cost-effective approach to purchasing adaptive technology, 2) expand the purposes and resources of the state's DeAnza High Tech Center Training Unit to enable the Center to provide adaptive technology training more closely aligned with the current needs of the community colleges, 3) develop Access Guidelines for Distance Learning and Campus Webpages, 4) ask those receiving technology grants from the Chancellor's Office to ensure that technology purchased with those funds be accessible to persons with disabilities, 5) adopt a systemwide approach to translating printed materials into electronic text/Braille, e.g., an Alternative Format Center, 6) establish a central registry of textbooks already translated into alternative format, such as Braille, so that a textbook translated for a student at one college may be re-used by students at other colleges, 7) make a concerted effort to alert community college libraries to their print/computer access responsibilities, and to acquaint them with resources available to assist in better serving patrons with disabilities, 8) incorporate print and computer-based information access as a component of the Chancellor's Office (Vocational and Educational Services) annual reviews of the DSPS offices, and 9) conduct a follow-

up survey after implementing such strategies to evaluate their impact on the colleges delivery of services to students with visual impairments.

OCR staff met with the Chancellor and his staff on April 20, 1998, in Sacramento, California. On September 10, 1998, the General Counsel of the Chancellor's Office provided OCR written assurance that the Chancellor's Office had either already started to implement the preceding strategies, or that it intended to implement such strategies within the next two to three years.

By letter dated October 1, 1998, OCR communicated to the Chancellor that the General Counsel's September 10, 1998 written assurance, coupled with the Chancellor's Memorandum to Chief Executive Officers of the colleges and districts dated June 12, 1998, was sufficient to establish a basis for voluntary resolution of issues raised in OCR statewide compliance review. The Chancellor was informed that in the next year OCR would look for progress reports by January 30 and June 30, 1999. Thus, on October 1, 1998, OCR closed the investigative stage of the compliance review, and began monitoring the Chancellor's Office implementation of its strategies to assist community colleges in their responsibilities to provide students with visual impairments access to print and computer-based information.

Progress Reports

On March 9, 1999, and September 8, 1999, the Chancellor's Office submitted progress reports to OCR. By letter dated February 24, 2000, OCR commended the Chancellor's Office for four accomplishments in particular:

- 1) the development of the Long Distance Education Access Guidelines (which is now used nationally by other colleges and universities as a model),
- 2) the key role played by the Chancellor's Office in actively participating in the negotiations between the publishers' legislative advocate, author's office and the sponsoring organization surrounding Assembly Bill 422, which requires publishers of instructional materials, such as textbooks, to provide their product in alternative format upon request,
- 3) the progress made toward negotiating several cooperative purchasing agreements (both for adaptive technology and for accessible mainstream software such as MicroSoft), and finally
- 4) the progress made toward developing a statewide Alternate Text Production Center to handle the more complex requests for production of Braille and other alternate format materials.

On May 29, 2001, OCR received the Chancellor's Office Final Progress Report. The progress reports received by OCR on March 9, 1999, September 8, 1999, and May 29, 2001, show that the following activities have been completed:

Cost Effective Approach to Technology Acquisition

Cooperative Purchasing Agreements

The Foundation for California Community Colleges (FCCC) has, as part of its Higher Education Cooperative Purchase Consortium, negotiated favorable agreements with a number of vendors that provide assistive technology and services. In addition, the Chancellor's Office succeeded in obtaining a substantial augmentation in the 2000-2001 budget for the Disabled Students Programs and Services (DSPS) to provide funding for implementation of some of the programs discussed herein. One part of this augmentation provided approximately \$600,000 to allow each college to purchase equipment and software necessary to establish a braille production capacity at the local level. From July 2000 to the present, the FCCC has concentrated on developing and administering a cooperative purchase package for this braille production equipment.

Specifically, the FCCC, working with the Chancellor's Office and the high Tech Training Center Unity (HTCTU), solicited bids and negotiated a standardized braille production package consisting of an Index Basic-D Braille Embosser, a scanner, optical character recognition software, and the Duxbury Braille translation program. To date, this package has been purchased by ninety-two (92) of the colleges at a considerable savings compared to retail prices. The standardization of this braille production package will allow for technical support and training to be provided in colleges through the HTCTU. It will also allow the statewide Alternate Text production Center (see below) to prepare and send electronic files in a standardized format to permit quick onsite embossing of shorter braille documents.

Moreover, the FCCC has also established agreements with vendors to provide colleges with resources to caption distance education and audiovisual materials. These agreements provide competitive fee rates and pricing structures that allow colleges to meet their obligation to ensure such media is accessible to persons who are deaf or hearing impaired.

Finally, the FCCC provides an online orientation covering accessibility issues for vendors participating in the High Education Cooperative Purchase Consortium [see <http://www.foundationccc.org/documents/dOrientation10-2000.doc>].

Access Provisions Included in Vendor Contracts

In an effort to ensure that the goods and services provided under the Higher Education Cooperative Purchase Consortium Program are accessible or can be made accessible to individuals with disabilities, all vendor agreements through the Higher Education Cooperative Purchase Consortium Program currently include the following provision:

Both Vendor and Customer are committed to making the offered products and services as accessible to disabled and Americans with Disabilities Act (ADA) compliant as possible. To this end the Customer will provide at no cost to the Vendor a five-day training program at the High Tech Center Training Unit (HTCTU) De Anza Community College, Cupertino, CA. The Vendor agrees to send appropriate personnel to receive this special training program.

As a result of further discussions between the Chancellor's Office and the FCCC, the FCCC has agreed to add the following language to all of its new agreements:

Vendor hereby warrants that the products or services to be made available under this agreement fully comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) and its implementing regulations set forth at 36 Code of Federal Regulations, part 1194. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention. Vendor further agrees to indemnify and hold harmless the Foundation for the California Community Colleges, the Chancellor's Office of the California Community Colleges, and any California community college purchasing the vendor's products or services from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement.

Finally, the Chancellor's Office has recommended that FCCC contact each of its current vendors and give them a deadline by which they will be expected to provide written assurances that their products meet the new requirements. The FCCC could then exercise its right to cancel any agreement with a vendor which fails to make appropriate changes in its products.

Vendor Negotiations

The FCCC has continued to work specifically with Microsoft to discuss the need for built-in accessibility features (particularly for their database application entitled Access). The FCCC has had a number of ongoing discussions with Microsoft, but did not feel that formal correspondence would contribute toward future progress in

this area. Instead, Microsoft has committed to continue the dialogue between the two entities as they work towards complete accessibility of their products. Representatives from both the FCCC and Microsoft have agreed that incorporating accessibility into new product development will add value to the process, and result in a more usable product.

Microsoft has stated that it is committed to accessible technology for everyone, and has launched a website (www.microsoft.com/enable/) that provides accessibility information for users, and allows users to contact specially trained staff to discuss accessibility solutions. The customer service support personnel at Microsoft are available by telephone to respond to inquiries regarding accessibility at 1 800 426-9400 or TTY 1 800 892-5234.

Adaptive Technology Training

As described in its website at <http://www.htctu.fhda.edu>, the High Tech Center Training Unit (HTCTU) of the California Community Colleges is a state-of-the-art training and support facility for community college faculty wishing to acquire or improve teaching skills, methodologies, and pedagogy in Assistive and Instructional Computer Technology. The Center supports Assistive Computer Technology programs at one-hundred fourteen California community colleges. More than seven thousand students with disabilities are currently enrolled in High Tech Center programs state-wide.

Now entering its twelfth year of operation, the High Tech Center Training Unit carries out extensive research, testing and evaluation of new and emerging technologies of potential benefit to persons with disabilities. The Center's findings are made available through a series of continuously evolving trainings and workshops attended each year by hundreds of California community college faculty.

HTCTU Library Access Training

The HTCTU developed and delivered thirteen (13) training workshops geared specifically towards librarians and library staff (see below, Library Access, for description).

HTCTU California Virtual College (CVC) Training

The HTCTU conducted a comprehensive survey of each California Virtual College (CVC) site in order to determine the present level of knowledge and expertise about accessible design and future training needs. Faculty and staff at the CVC centers are incorporating accessibility for students with disabilities in the design and

delivery of curriculum, web pages, and other instructional materials. CVC staff are also beginning to incorporate universal access design concepts to ensure accessible electronic media for online distance education. The HTCTU will soon be in a position to expand its training for CVC staff and its efforts to work with the CVC centers. Part of the budget augmentation for fiscal year 2000-2001 increased funding for the HTCTU and a new full-time Instructor/Specialist was recently hired to support the development of accessible web-based instructional resources. The Chancellor's Office has also taken steps to supplement the training available to CVC staff by providing a one-time augmentation of approximately \$150,000 to the Professional Development Center to contract with outside trainers recommended by HTCTU. (see below, Distance Education, for further description of CVC accessibility activities)

Distance Education and Campus Web Pages

Distance Education Access Guidelines

The Chancellor's Office established a Distance Education Accessibility Work Group to develop comprehensive guidelines on making distance education accessible for students with disabilities. The work group, in consultation with the HTCTU, developed a comprehensive technical assistance publication entitled Distance Education: Access Guidelines for Students with Disabilities. Posted at the HTCTU website at <http://www.htctu.fhda.edu>, these guidelines contain the basic requirements for providing access for students with various disabilities, including visual impairments. These guidelines also identify specific access modes for the delivery of distance education instruction. It should be noted that the Distance Education Access Guidelines were finalized after being reviewed by a variety of groups within the California Community Colleges system including the Academic Senate Committee, DSPS Regional Coordinators, and the High Tech Center Training Unit (HTCTU) Advisory Committee. To OCR knowledge this was the first distance education access standards adopted by a statewide educational system. These guidelines are now being used around the nation as a model for post-secondary institutions seeking to set standards to ensure that students with disabilities have access to distance education programs.

California Virtual College (CVC) - Distance Education Resource Centers

The Chancellor's Office, System Advancement and Resource Development Division, has awarded grants to fund four regional centers, known as California Virtual Colleges (CVC), to increase delivery of curriculum through distance learning conducted online. The grants require the staff at the four centers to, among other things, provide technical assistance and support for colleges and individual faculty members about how to make distance education courses accessible to students

with disabilities. In particular, the staff at these centers will assist colleges with respect to providing access to Web pages and other computer-based instruction for blind students, the captioning of auditory information for students with hearing impairments and the provision of the accommodation of test proctoring in off-site locations.

The four CVC regional centers are located in the Greater Bay Area (Foothill-DeAnza Community College District-DeAnza College), Greater Los Angeles Region (Rio Hondo College, in collaboration with Pasadena City College, Long Beach City College, and College of the Canyons), Southern Los Angeles, Orange and San Diego Counties (Coastline Community College, in cooperation with San Diego Community College District), and Allan Hancock, Butte, Merced, and Victor Valley Colleges (Cerro Coso, in partnership with the Los Rios Community College District).

In addition to the above grants, the Chancellor's Office awarded an additional grant to support the development and dissemination of distance education standards, training resources and exemplary practices among distance educators. A major component of the grant was the exchange of research information and resources as well as consultation and technical assistance on accessibility requirements for students with disabilities. The grant was awarded to El Camino Community College District, El Camino College in partnership with Santa Monica College, Santa Rosa Junior College, the four California Virtual College (CVC) Regional Centers, @ONE, and other related programs and organizations.

Finally, the Chancellor's Office awarded a grant to provide training, technical support, and online resources associated with the creation of accessible video and Web based education. The grant provides \$300,000 over a two-year period to the Foothill-DeAnza Community College District to be carried out by the HTCTU, which is located at DeAnza College. Through this grant CCC staff and faculty as well as CVC regional center staff will have access to highly specialized trainings (see description of Adaptive Technology trainings, above), guidelines, technologies, and techniques used for creating accessible distance education resources for students with disabilities.

Linking Technology Grants to Grantee College's Accessibility

At this time, California's primary support for technology procurement by colleges is provided through the Telecommunications and Technology Infrastructure Program (TTIP) funding for 2000-2001 which is distributed through an allocation formula. Districts receiving TTIP funding for 2000- 2001 will be reporting in the next few months on how they have used their funding to provide access for students with

disabilities to the technology resources supported with state funding. Districts will specifically be asked to indicate the extent to which accessible computer workstations are currently available to students with disabilities. Beginning in 2001-2002, districts will be required to explicitly discuss how they will address accessibility issues in the plan or certification document they must submit prior to receiving their allocation of TTIP funds.

In addition, the Chancellor's Office provides funding for the acquisition of technology through a variety of grants. All grants currently contain a provision requiring that software or hardware purchased with grant funds be accessible or that appropriate adaptive equipment is obtained in order to provide access when needed. That provision included in grants reads as follows:

By signing this agreement, Grantee assures the state that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C.12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. Grantee shall, upon request by any person, make any materials produced with grant funds available in braille, large print, electronic text, or other appropriate alternate format. Grantee shall establish policies and procedures to respond to such requests in a timely manner. All data-processing, telecommunications, and/or electronic and information technology (including software, equipment, or other resources) developed, procured maintained or used under this grant, whether purchased, leased or provided under some other arrangement, shall comply with the regulations implementing Section 508 of the Rehabilitation Act of 1973, as amended, set forth at 36 C.F.R. 1194. Design of computer or web-based instructional materials shall conform to guidelines of the Web Access Initiative (see <http://www.w3.org/WAI/GL/WD-WAI-HAG>) or similar guidelines developed by the Chancellor's Office.

Printed Materials Provided in Electronic Text/Braille

Alternate Text Production Center (ATPC)

In addressing the needs of colleges to provide printed materials in alternate media, the Chancellor's Office decided upon a two-pronged approach. The Chancellor's Office concluded that colleges should have the capacity to produce some braille materials on-campus. This was considered to be particularly important in dealing with class handouts and documents with a short useful lifetime. However, producing textbooks and other long or more complex materials was felt to require a level of expertise and staffing which could not be cost-effectively duplicated at every campus. Thus, the Chancellor's Office also decided to establish a statewide

Alternate Text Production Center (ATPC) which will serve all California community colleges. The ATPC will obtain electronic text from publishers or produce it using scanning technology, provide electronic text to colleges for direct use by students, produce materials in braille or large print, and/or send formatted files to colleges for production of braille materials onsite.

In April 2000, the Chancellor's Office issued interim guidelines ("Guidelines for Producing Instructional and Other Printed Materials in Alternate media for Persons with Disabilities") to assist colleges in handling request for production of materials in alternate media (those guidelines are posed at the HTCTU website at <http://www.htctu.fhda.edu>).

In October 2000, the Chancellor's Office released a Request for Application (RFA) to establish the ATPC. By telephone on June 22, 2001, the General Counsel for the Chancellor's Office informed OCR that Ventura Community College would serve as the ATPC for both Braille production and e-text conversion. It was anticipated that the grant would be awarded and the project underway during Summer 2001. The Chancellor's Office is requiring that the ATPC establish mechanisms for providing services to other colleges and universities on a contractual fee-for-service basis.

Standardized Assessment Instruments in Alternate Media

The Seymour-Campbell Matriculation Act of 1986 (Cal. Ed. Code 78210 et seq.) establishes a system of assessment testing and counseling for all community college students. The matriculation regulations adopted by the Board of Governors (Cal.Code Regs., tit. 5, 55500 et seq.) have for years required colleges to ensure that their assessment tests are made accessible for students with disabilities, but in 1999 the Chancellor's Office Matriculation Advisory Committee voted to require that publishers of commercially produced tests be required to make their tests available in alternate media on request. This requirement was incorporated into the new standards for approval of assessment tests issued in February 2001. The list of instruments approved by the Chancellor's Office is being revised based on these new standards, and publishers will be asked to affirmatively certify that they are in compliance with this requirement. Such certifications have not yet been received by the Chancellor's Office. In addition, the Chancellor's Office is surveying all colleges to ascertain whether publishers have supplied testing materials in alternate media when requested to do so. The Chancellor's Office has indicated that it will contact any publisher who is reported by colleges as not appropriately responding to requests for alternate media.

State Law (AB 422) Requiring Textbook Publishers to Provide Alternate Media

On September 15, 1999, California Governor Gray Davis signed into law Assembly Bill 422 (Steinberg) which requires publishers of instructional material to provide the material at no cost in an electronic format for use by students with disabilities at the University of California, California State University, and California Community Colleges. This law became effective January 1, 2000. Information to colleges regarding how to implement AB 422 was included in the "Guidelines for Producing Instructional and Other Printed Materials in Alternate Media for Persons with Disabilities" released by the Chancellor's Office in April 2000.

Following a request from Assemblyman Steinberg's Office for a progress report on the implementation of AB 422 within the California Community College system, twelve colleges voluntarily provided information that was used by the Chancellor's Office in February 2001 to respond. Thereafter, on April 11, 2001, a meeting was convened by Assemblyman Steinberg on April 11, 2001, to discuss strategies for implementation of AB 422. Those attending the meeting included representatives from the publishing industry and from all three of the systemwide offices for the systems of public post-secondary education. One outcome of the meeting was the establishment by the Chancellor's Office of a Listserv to provide a means by which those serving students with disabilities in all three segments can communicate and exchange information about the implementation of AB 422. The industry representatives also identified a person with each major publisher who would serve as a single point of contact for requests under AB 422.

Finally, on a national level OCR notes that in a meeting on June 27, 2001, the Association of American Publishers reached a final agreement on the text of proposed national legislation entitled the Instructional Materials Accessibility Act of 2001. Participants at the meeting included the American Foundation for the Blind (AFB), National Federation of the Blind, American Council of the Blind, and the Association for Education and Rehabilitation of the Blind and Visually Impaired, Recording for the Blind & Dyslexic, American Printing House for the Blind, the Texas Education Agency, and other constituencies of the AFB Solutions Forum. These organizations intend to work together to develop the necessary strategies to get the bill introduced, passed and signed into law.

Central Registry of Textbooks in Alternate Format

In the Chancellor's March 13, 1998 progress report to OCR, it agreed that a centralized registry of textbooks available in alternate format would be a significant resource to the colleges. Accordingly, the HTCTU staff developed a Web page where colleges may list books which have been produced in alternate media. DSPS

staff, librarians, and ADA coordinators can send email requests and obtain books which have been produced in alternative formats by other colleges. The registry can be accessed at <http://htcoff1.htctu.fhda.edu/tango/bookex/bookex.html>

Library Access

HTCTU Training for Libraries

The HTCTU developed and delivered thirteen (13) training workshops entitled "Assistive Computer Technology for Library Access" between July 1998 and March 2001. Literature announcing these training opportunities was targeted to librarians and library staff. The "Assistive Computer Technology for Library Access" training focused on key concepts related to internet-based library automation systems, access issues, basic capabilities using selected assistive computer technologies, and evaluation measures for determining the accessibility of web interfaces provided by different electronic library databases.

These two-day training courses provided Librarians and Library staff with hands-on experience in the use of assistive computer technologies typically found in the library setting. A total of ninety-three (93) participants attended the training. Of these participants, twenty-nine (29) individuals attending the training were librarians and/or library staff. The total training participants represented fifty-nine (59) of the one hundred and eight (108) California Community Colleges. The HTCTU is in the process of hiring new staff and, once this process is complete, expects to offer additional training for librarians and library staff.

During the Summer 2000 term, the HTCTU conducted a survey of eighteen (18) training participants representing California Community College Libraries. The purpose of the survey was to determine the present availability of assistive technologies and the perceived training and support needs of Librarians. Although the response rate from the survey was not sufficient to produce any valid findings, the information that was collected led to the creation of an audiovisual (VCR format video) resource intended to provide Librarians with basic information about assistive computer technology. The audiovisual resource material will be compiled and released during the Summer 2001 term. Librarians and/or Library staff that were unable to attend the training at the HTCTU may view the audiovisual material, and contact the HTCTU for additional assistance.

At the onsite of the training workshops, the HTCTU established a Listserv for Librarians interested in discussing issues related to the installation and a maintenance of assistive computer technologies in library settings. This Listserv provided a forum for follow-up communication and technical support among

professionals interested in assistive computer technologies, strategies, and solutions in the Library setting.

In addition, Peggy Tate, a Specialist in the DSPS Unit in the Chancellor's Office made two presentations on access for students in the library setting. These presentations were: October 4, 2000 - Annual Library Deans and Directors Training (Sacramento, CA), DSPS Update, and November 9, 2000 - Library and Learning Resources Second Friday: Stay at Work Conference Series (Sacramento, CA) DSPS Update.

Funding Request for Library Access

The HTCTU, in cooperation with the Chancellor's Office, and Librarians throughout the State, formulated a comprehensive hardware and software list of assistive computer technologies needed in libraries and an associated budget for the statewide costs of these systems. The plan calls for spending approximately \$11 million to provide three accessible workstations (one for the blind and visually impaired, one for the learning disabled, and one for those with limited manual dexterity) in each college library. This information was incorporated in the Budget Change Proposal requesting funding for the Technology II Strategic Plan, which Plan (requesting a total of \$94 million in State funding) was not included in the Governor's proposed budget for 2001-2002. However, the Chancellor's Office and other groups within the community college system continue to advocate for its funding through the legislative budget process. If the Tech II Plan is not funded for 2001-2002, the Chancellor's Office believes that it is likely that funding will be sought again in future years and that the Tech II Plan will ultimately be funded in some form.

Annual DSPS Reviews

The Chancellor's Office has developed a checklist which is used by the review teams conducting Disabled Students Programs and Services (DSPS) program reviews to ensure that they address information access issues for students with visual impairments. In addition, the Chancellor's Office is also using this same checklist when its contractor conducts civil rights reviews of vocational education programs at the colleges.

Follow-Up Survey of Colleges

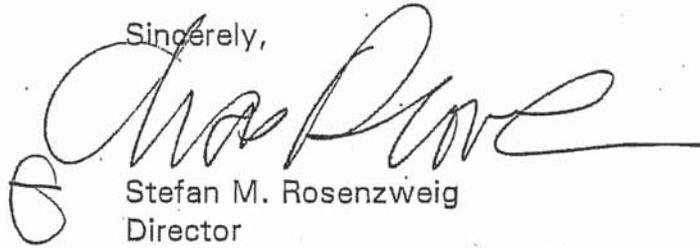
Once the Alternate Text Production Center is fully operational for the 2002-2003 academic year, the Chancellor's Office intends to conduct a survey of the California Community Colleges to determine the impact the activities of the Chancellor's

Office have had on enhancing the abilities of the colleges in providing students with visual impairment access to print and computer-based information. This follow-up survey will document improvement in delivery of services and provide a comparison to the results of the original OCR survey conducted five years ago at the beginning of this OCR compliance review.

In closing the OCR monitoring stage of this compliance review, OCR wishes to thank the numerous individuals whose hard work and commitment to access have contributed so significantly to the accomplishments of the Chancellor's Office described herein. In particular, Vice-Chancellor/General Counsel Ralph Black and HTCTU Director Carl Brown, along with consultant and Assistive Technology Specialist Laurie Vasquez from Santa Barbara City College, have demonstrated initiative and leadership that has enabled the California Community Colleges to acquire a national reputation as a model and resource for other post-secondary educational institutions who are seeking to strategically and effectively serve a component of the student community that has been historically difficult to provide equal educational opportunity.

If you have any questions, please contact either Paul D. Grossman (415) 556-4275 or Sarah Hawthorne at (415) 556-4158.

Sincerely,

A handwritten signature in black ink, appearing to read "Stefan M. Rosenzweig". The signature is written in a cursive style with a large initial "S" on the left.

Stefan M. Rosenzweig
Director
San Francisco Enforcement Office
Western Division

cc: Ralph Black, Vice-Chancellor
General Counsel, Chancellor's Office
California Community Colleges

Commission on State Mandates

Original List Date: 6/18/2003
Last Updated: 4/26/2007
List Print Date: 05/06/2008
Claim Number: 02-TC-22
Issue: Disabled Student Programs and Services

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849

Fax: (916) 327-0832

Ms. Kelly Hargreaves
Department of Rehabilitation
721 Capitol Mall
Sacramento, CA 95814

Tel: 916-58-5825

Fax:

Mr. Joe Rombold
School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Tel: (916) 669-5116

Fax: (888) 487-6441

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102

Fax: (916) 485-0111

Mr. Douglas R. Brinkley
State Center Community College District
1525 East Weldon
Fresno, CA 93704-6398

Tel: (916) 000-0000

Fax: (916) 000-0000

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

Mr. Thomas Todd Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:
Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: (951) 303-3034 Fax: (951) 303-6607
Mr. Steve Smith Steve Smith Enterprises, Inc. 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: (916) 852-8970 Fax: (916) 852-8978
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: (916) 446-7517 Fax: (916) 446-2011
Mr. Arthur Palkowitz San Diego Unified School District Office of Resource Development 4100 Normal Street, Room 3209 San Diego, CA 92103-8363	Tel: (619) 725-7785 Fax: (619) 725-7564
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: (916) 454-7310 Fax: (916) 454-7312
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: (866) 481-2621 Fax: (866) 481-2682
Mr. William Duncan West Kern Community College District 29 Emmons Park Drive Taft, CA 93268	Claimant Tel: (661) 763-7700 Fax:

Mr. Erik Skinner
California Community Colleges
Chancellor's Office (G-01)
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Tel: (916) 322-4005

Fax: (916) 323-8245

Mr. David E. Scribner
Scribner & Smith, Inc.
2200 Sunrise Boulevard, Suite 220
Gold River, CA 95670

Tel: (916) 852-8970

Fax: (916) 852-8978

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Tel: (916) 445-0328

Fax: (916) 323-9530

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 324-4888

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

Claimant Representative

Tel: (916) 565-6104

Fax: (916) 564-6103

