Section 504(E) and higher education: An historical case study of federal policy development

Robert John Howman

College of William & Mary - School of Education

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SECTION 504(E) AND HIGHER EDUCATION:
AN HISTORICAL CASE STUDY OF
FEDERAL POLICY DEVELOPMENT

A Dissertation
Presented to
The Faculty of the School of Education
The College of William and Mary in Virginia

In Partial Fulfillment
Of the Requirements for the Degree
Doctor of Education

by:
Robert J. Howman
Fall 1994
UMI Number: 9514359

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by 

Robert John Howman 

Approved November 21, 1994 by 

Dorothy E. Finnegan, Ph.D. 
Chairperson of Doctoral Committee 

James M. Yankovich, Ed.D. 

Louis P. Messier, Ed.D.
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ABSTRACT

This research project investigates the processes by which federal policy pertaining to the American higher education system evolves through an historical case study analysis of the development and implementation of section 504(E) of Public Law 93-112. Also examined is the statute's impact on postsecondary education in prohibiting discrimination on the basis of handicap.

Section 504(E) was developed and shaped by the actions of the federal courts, Congress, and various federal agencies. Policy development was also stimulated by interest group politics, public opinion, the influence of political elites, and the calendar of national politics. Although the actual impact of this statute is difficult to determine, the data presented indicates that most campuses have made at least some effort to comply. Full access and accommodation, however, are yet to be realized nationally.

This investigation contributes original research to the limited number of studies addressing the legal and policy issues concerning postsecondary education and students with disabilities. Additional research is needed to determine institutional costs for section 504(E) compliance, factors other than section 504(E) that contribute to the increased enrollment of disabled students, actual compliance with
section 504(E) requirements, and the impact of the threat of federal fund withdrawal as a sanction for noncompliance.
SECTION 504(E) AND HIGHER EDUCATION:
AN HISTORICAL CASE STUDY OF
FEDERAL POLICY DEVELOPMENT
CHAPTER ONE: THE PROBLEM AND ITS SETTING

Introduction

This study examines the development and implementation of section 504(E) of the 1973 Rehabilitation Act. Under this law, postsecondary institutions that receive federal funds may not discriminate on the basis of handicap.

Historically, attending an American college or university was considered more of a privilege than an inherent right (Ratliff, 1972). Access to a higher education was often limited, especially for women, racial minorities, the economically disadvantaged, and persons with disabilities (Hartman, 1986; Jencks & Riesman, 1968; Thelin, 1982).

By the mid-twentieth century, both the public and the courts began to view higher education as an important benefit (Millington, 1979). The demand for equal educational opportunity escalated during the civil rights movement of the 1960s. Federal laws were enacted to prohibit discrimination on the basis of race (1964 Civil Rights Act), gender (1972 Education Amendments, Title IX) and disability (1973 Rehabilitation Act, section 504). Noncompliance could result in the loss of federal funding and/or a lawsuit.

The effect of these laws on higher education is difficult to measure. Contributing factors include their vague wording, court-substituted language in certain instances,
the complex interplay of actors and organizations in policy development and implementation, and a lack of policy impact studies (Johnson & Canon, 1984).

Opinions vary concerning the effectiveness of section 504(E). Some studies suggest this statute expanded postsecondary educational opportunities for disabled persons (Yanok, 1987), resulted in their increased enrollment (Fishlock, 1987), and drastically improved program and physical access, academic accommodation, and student services (Marion & Iovacchini, 1983; Williams & Hodinko, 1988).

Other studies indicate persons with disabilities have not been afforded equality of educational opportunity. Enrollment figures for this population do not compare favorably with that of the nondisabled (Mithaug, et al., 1985). Section 504(E) has also been criticized for being ambiguous (Griffin, 1982), costly (Cardoni, 1982), and lacking in direction on how to implement it (Putnam, 1984).

In summary, federally mandated social policies have been aimed at providing nontraditional student groups with equal opportunities in postsecondary education. Whether or not these policies have been effective in accomplishing their missions is difficult to determine as they have been influenced and shaped by many forces. This study describes the development and implementation of federal policies that affect higher education by investigating the evolution of section 504(E).
The Problem
Statement of The Problem

The problem of this study is to document the processes by which federal policy pertaining to the American higher education system evolves through an historical case study analysis of the development and implementation of section 504(E) of Public Law 93-112.

Research Questions

1. What factors, particularly during the 1960s and early 1970s, led to the development of section 504(E)?
   a. Why was section 504(E) necessary?
   b. Who were the key actors in raising this need?
   c. What organizations were influential?
   d. What were the contributing social events?

2. How did section 504(E) become law, from the enactment of the 1973 Rehabilitation Act to the issuance of its implementing regulations in 1977?
   a. What political processes were involved?
   b. Who were the key actors, groups, and organizations?
   c. Were there any controversial issues to be resolved?
   d. What does section 504(E) mandate?

3. What has been the overall effect of section 504(E) on postsecondary education, from its implementation in 1977 to the 1990 Americans with Disabilities Act?
   a. What was the immediate reaction of the higher education community to section 504(E)?
   b. As a compliance regulation, what are the strengths and limitations of section 504(E)?
   c. Has section 504(E) been modified by judicial interpretations or subsequent legislation?
   d. Are higher education institutions in compliance with section 504(E)?

The Setting

The Limitations

This study focuses primarily on a thirty-year period,
from 1960 to 1990. It is also limited to the examination of selected federal legislation that addresses the education of persons with disabilities, with an emphasis on the period following the enactment of section 504(E) up to the passage of the 1990 Americans with Disabilities Act.

Selected federal court decisions based on their relevance to section 504(E) issues are analyzed. The study also reviews, in national scope, data pertaining to the policies and practices of two- and four-year public postsecondary institutions.

The Delimitations

The study does not examine state or local statutes, nor analyze state judicial decisions. Furthermore, specialized career schools, vocational-technical institutes, and private institutions are not included.

The policies of individual colleges or universities, or of any particular state agency are not examined. Also, the study does not compare or evaluate the quality of services being rendered by specific colleges or universities.

The Definition of Terms

Students with disabilities replaces "handicapped students." According to section 504, this includes: "...any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities (e.g., self-care, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and
working), (ii) has a record of such impairment, or (iii) is regarded as having such an impairment" [Subpart A, sec. 84.3 (j)(1-2)].

Qualified handicapped person, as defined by section 504: "With respect to postsecondary and vocational education services...a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's (i.e., in receipt of federal financial assistance) education program or activity."

Postsecondary education is education beyond high school and, for the purpose of this study, refers to a higher education at two-year and four-year colleges and universities.

Relevant federal legislation are those public laws enacted by Congress which directly or indirectly protect the educational and related civil rights of persons with disabilities.

Selected federal court decisions are the judicial rulings relevant to section 504(E) issues that were rendered in U.S. District Court, U.S. Court of Appeals, and by the U.S. Supreme Court.

The Abbreviations

ADA is the abbreviation for the "1990 Americans with Disabilities Act" (P.L. 101-336).

DHEW is the abbreviation for the "Department of Health, Education, and Welfare."

EAHCA is the abbreviation for the "Education for All
Handicapped Children Act of 1975" (P.L. 94-142).

OCR is the abbreviation for the "Office for Civil Rights."

P.L. is the abbreviation used for "Public Law."


The Assumptions

The first assumption is that the processes by which federal policy pertaining to higher education evolves can be documented through an historical analysis of the development and implementation of section 504(E).

The second assumption is that representative policy implications can be generated through a general study of two-year and four-year public colleges and universities.

The third assumption is that a sufficient number of federal court decisions involving section 504(E) issues exists to allow for a thorough interpretive analysis.

The fourth assumption is that the overall impact of section 504(E) on postsecondary education can be identified and analyzed.

Significance of The Study

This research project may be of interest to those who study higher education, public policy, law and the legal system, disability-related issues, and/or individual rights. Likewise, decision-making bodies and those who are involved in the development of postsecondary education policy may
find the information, and its implications useful.

Demographic Changes

The number of nontraditional college students is expected to increase (Phillips, 1986; Hodgkinson, 1986). This study cautions higher education officials to be prepared, as changes in student demographics are certain to bring new demands on the institution. Demands supported by the legal system could significantly impact educational policy and practice.

More persons with disabilities are attending postsecondary institutions than ever before. According to the HEATH Resource Center (Jan./Feb., 1988, p. 3), the number of college freshmen with disabilities rose from 2.8% in 1978 to 7.4% by 1985. HEATH (Fall, 1990, p. 3) also noted that in 1987, 1.3 million (10.5%) of the nation's 12.5 million postsecondary students reported having a disability.

This trend is expected to continue. Many high school students with disabilities are receiving academic instruction in regular classrooms, and as a result are acquiring the skills necessary to enter college (Yanok, 1987). Furthermore, the recent provision of transition services to assist these students with their entry into postsecondary programs appears to be promising (Hardman & McDonnel, 1987).

Legal Considerations

In Wood v. Strickland (1975), the U.S. Supreme Court ruled that educators must know the constitutional rights of
students. Ignorance of those rights cannot be used as a legitimate excuse for violating them.

Section 504 recognizes education as a civil right of persons with disabilities (Mayer, 1982). The 1990 Americans with Disabilities Act is broader in application, covering more programs and services. It may be enforced by both the federal government and through private lawsuits. These laws have resulted in a rise of disability-related litigation (Rothstein, 1991).

If for no other reason, college administrators and faculty must understand and observe their obligations under law to reduce the risk of liability. Examining the law and legal processes, this study provides insight and information that may prove useful to postsecondary educators.

Contribution to Research

Issues concerning students with disabilities in post-secondary education have been the subject of minimal research (Putnam, 1986). Special education in the lower grades and equal opportunity for other minorities have received greater attention. This is not surprising, as the demand for a higher education by the disabled has not been great. Also, section 504 and its implementing regulations were developed after other antidiscrimination statutes.

This investigation contributes original research to the study of persons with disabilities in higher education. It also generates additional questions for future research.
CHAPTER TWO: THE REVIEW OF THE LITERATURE

Most works from the late 1970s and early 1980s that address section 504 are concerned with legal interpretation. Scholars agree that section 504 prohibits discrimination on the basis of handicap, but the statute’s vague wording has resulted in widespread disagreement over the parameters of responsibility and the meaning of certain concepts (e.g., "reasonable" accommodation).

Later studies typically focus on a single requirement (e.g., physical access) and its impact on higher education (e.g., costs). The results of this kind of research have reached different conclusions, and the effectiveness of section 504 as a compliance mandate is therefore not clear.

Relatively few efforts comprehensively examine the development and implementation of section 504(E). Without a model to follow, this investigation considers other works related to public policy development, policy analysis, and federal policy in higher education.

**Policy Development**

Federal laws, as public policies, typically result from environmental demands and a complex interplay between Congress and agencies of the executive branch and the courts. Understanding the history of a policy’s development will aid in interpreting and analyzing that policy.
Definition of Public Policy

According to Dye (1972), public policy is whatever governments choose to do or not to do. Government action, as well as inaction, therefore constitutes public policy because of the potential to impact society.

Dye disagrees with such scholars as David Easton, Carl Friedrich, Harold Laswell and Abraham Kaplan who define government action as policy only if the action has a goal. One cannot always be certain, Dye explains, that a specific governmental action has a goal. The anti-poverty programs of the 1960s, for example, symbolized what society hoped to be (Dye, 1976). Poverty, the federal government realized, could not be ended for all American citizens.

Policy-making

Public policy concerning such issues as equality of educational opportunity may be analyzed by examining the process by which those policies were developed (O'Neil, 1972). Problems met could help to uncover and explain ambiguities, contradictions, and planned as well as unplanned consequences.

To know why and how a policy was developed, Dye (1972) suggests that the political system be studied. Researchers should examine how policy is generated, how institutions and processes function to handle environmental demands, and how political parties, interest groups, voters, legislators and other political actors behave.
Gladieux and Wolanin (1976) utilized a similar strategy in their historical analysis of federal policy development in higher education. The researchers examined the structure, idiosyncracies and rules of the political system, the issues and solutions that were discussed, the force and clash of personalities, the predispositions of the policymakers, and the element of chance.

Also to be considered is the complex interplay of diverse social values (Klein, 1984). Conflicting values prevent the government from fully realizing all desired goals simultaneously. As a result, the legal system necessarily promotes some values and impinges upon others.

**Federal Policy Development and Higher Education**

Under the U.S. Constitution, the basic responsibility for education is reserved to the states and private citizens. The federal role in higher education has therefore been that of supplementing the programs and policies of the states (Gladieux & Wolanin, 1986). If a comprehensive federal policy were formulated, it would imply a primary federal responsibility and thus violate proper federal and state roles.

Instead, the federal government prescribes policy through compliance regulations that are coupled with the provision of funding (Finn, 1978). To receive federal monies, the institution must honor the regulations. As colleges and universities became more dependent on federal
funds, the ability of funding sources to control or regulate institutions increased (Edwards & Davis-Nordin, 1979).

Federal policies affecting higher education are largely utilitarian, based on the uses society makes of this enterprise (Kerr, 1982). The general purpose of federal funding programs include research in areas of national interest, equal access and special benefits to certain classes of persons, employment training, and strengthening collegiate institutions (Finn, 1978).

The most celebrated examples are the affirmative action requirements, which consist of the federal right-to-education laws that protect racial minorities, women, and the disabled. Each prescribes specific compliance requirements and carries with them the threat of federal fund withdrawal in the case of noncompliance (Mayer, 1982).

The federal courts also play a major role in policy development. Historically, the judiciary recognized academic officials as experts in education and allowed colleges and universities to enjoy a large measure of discretion (Brubacher, 1971). Mounting social pressure during the civil rights movement to ensure equality of educational opportunity resulted in the courts becoming increasingly involved in matters of educational policy (Ratliff, 1972).

The Warren Court (1953-1965) demonstrated a particular interest in the protection of civil liberties. Federal courts emphasized higher education was an important benefit
that must be available to qualified persons who seek it (Millington, 1979). Educators could be held liable for damages if they violate the legal rights of students.

Essentially, the federal government has established a distinct pattern of educational policy-making. The courts determine constitutional guarantees, Congress gives substance to those definitions, and the executive branch weaves in and out of this process with its regulatory and enforcement powers (Salamone, 1986). Further, policy innovations and changes are sometimes stimulated and formed by presidential leadership, interest group politics, national crises, or strong public opinion.

**Development of Section 504**

Although federal laws concerned with the education of persons with disabilities can be traced as far back as the early 1800s, few educational opportunities for this population actually existed prior to the 1970s (Mayer, 1982). Society did not recognize disabled persons as having legal rights, and most were excluded from education at all levels (Meyen, 1978).

The civil rights movement raised public awareness of the educational deprivation that all neglected groups suffered. As racial minorities successfully gained access through federal legislation and court orders, parents of handicapped children, advocacy groups, and educational professionals pressed Congress and the courts for similar
protection measures (Salamone, 1986).

Congress passed section 504 of the 1973 Rehabilitation Act as a civil rights statute prohibiting discrimination on the basis of handicap in any program or activity receiving federal financial assistance (Biehl, 1979). Funds could be withdrawn in the case of noncompliance. Section 504 is patterned after Title VI of the 1964 Civil Rights Act (prohibiting racial discrimination) and Title IX of the 1972 Education Amendments (prohibiting sex discrimination).

Policy Implementation and Impact

Public policies do not implement themselves. Many different forces can shape a policy and likewise effect its implementation. Analysis to determine the effectiveness of a policy must therefore include an examination of the implementation process and the degree to which that policy has achieved its intended purpose.

Policy Implementation

Once a law is passed, Congress delegates to an administrative agency within the executive branch the task of developing detailed regulations to guide its implementation (NICHY, 1991). Typically, that agency also accepts responsibility for administering and enforcing the law (Johnson & Canon, 1984).

The Civil Rights Act of 1964 brought into being the "administrative-judicial era" (Kirp & Yudof, 1974). Under Title VI, Congress authorized DHEW to administer the Act and
withdraw funds from any schools that continue to discriminate on the basis of race. In addition, private citizens could file a lawsuit in federal court to seek proper redress for alleged discrimination.

Title IX (1972 Education Amendments) and section 504 are similarly administered and enforced. In 1977, the Department of Health, Education and Welfare (DHEW) issued the regulations that implement section 504 (Biehl, 1978). The Office for Civil Rights within DHEW is primarily responsible for enforcing the statute.

The effective implementation of laws governing human services, according to Meyen (1978, p. 10) is greatly dependent on:

...clear regulations, responsive public and professional advocacy groups, and significant consequences for failure to comply.

As with Title VI and Title IX, section 504 contains vague wording and is ambiguous in scope (Salamone, 1986). No congressional hearings were held, nor were committee reports prepared that would suggest how this statute was to be interpreted or applied.

As a result, the federal courts were called upon to clarify the ambiguities in section 504 (Salamone, 1986). The judiciary, therefore, plays a major role in resolving public policy questions (Becker, 1969; Spaeth, 1979).

Given little guidance from Congress, and the brevity of
section 504, the courts have had to look at analogous provi-
sions of the law (i.e., Title VI and Title IX) in an attempt
to resolve the more difficult substantive and procedural
questions (Griffin, 1982). Even the Supreme Court has pro-
vided limited direction, as it was reluctant to distinguish
between affirmative action and nondiscrimination or deter-
mine when refusal to accommodate is legal or illegal in
specific situations (Salamone, 1986).

The federal courts have reached widely different con-
clusions concerning section 504 issues (Griffin, 1982).
Lacking judicial direction, institutions have often had to
rely on their own "good faith" interpretations.

Issues identified by Griffin (1982) that confound the
efficient implementation of section 504 include: the mean-
ing of "otherwise qualified"; if the law applies to the
entire institution or only to those programs directly
receiving federal funds; whether damages are available; and
if "untentional" discrimination is prohibited. In addi-
tion, Bailey (1979) notes that such concepts as "program
accessibility" and "reasonable accommodation" are particu-
larly difficult to interpret.

Although the academic community generally welcomed sec-
tion 504(E), the statute’s ambiguous language caused concern
among college officials (Dalke, 1991; Bailey, 1979). Sec-
tion 504(E), according to Pinder (1979, p. 3), was often
misinterpreted by academic leaders as an order to "take care
of the needs of students with disabilities. As a result, disabled persons were viewed as costing money and disrupting usual routines by requiring more or something different than the nondisabled.

The greatest concern of college officials was the cost of compliance (Bailey, 1979; Welch-Wegner, 1983). As with other civil rights laws, sufficient federal funds were not provided to help institutions satisfy the requirements (Edwards & Davis-Nordin, 1981).

Academic leaders also objected to those federal regulations that "appear to threaten academic freedom and impinge upon institutional sovereignty in areas where the academy was accustomed to regulating itself" (Finn, 1978, p. 143). A great fear, for example, was that academic standards would be jeopardized by having to accommodate an individual's disability (Bailey, 1979).

Policy Impact

Researchers agree that analyzing public policy and its impact is a difficult task. Many variables must be considered, and it appears that no single method or strategy will suffice.

Since social values are translated into policies which produce expected or unexpected results, O'Neill (1985) contends that the measure of a policy's effectiveness is the degree to which the results realize the values that justify the policy.
Determining the values that justify a policy and the degree to which the results realize these values, however, is a great challenge. Social issues are complex, and values may be conflicting. Policies that solve the problems of one social group may actually create problems for another group.

Also, public policy deals with subjective issues, and researchers often interpret the results of their analyses differently (Dye, 1972). Without sufficient and reliable data to determine the effectiveness of such policies as those dealing with equality, researchers have been forced "to either guess where society is likely to end up if it pursues those policies, or to assess the quality of those policies by means other than product analysis" (O'Neill, 1985, p. 257).

Fuller (1969) believes that the internal morality of a law will determine its effectiveness. Internal morality refers to the procedural characteristics embodied in a statute to preserve its integrity.

The criteria developed by Fuller to determine a law's internal morality is applicable to policy analysis (Klein, 1984). Accordingly, a law: must have general rules that are known; cannot be retroactive; must be reasonably clear; should not demand the impossible or extremely difficult; and should be constant over time. Also, the legal rules should not conflict with the way the law is administered.

Policy analysis, Dye (1972, p. 6) suggests, should
involve: an explanation of what occurs before and after a policy is issued; a rigorous search for the causes and consequences of public policies; and an effort to develop and test general propositions about the causes and consequences of public policy.

Determining the impact of a policy involves identifying changes in the environment or the political system that are associated with government activity (Dye, 1972). Included are its effects on target and non-target situations or groups, on immediate and future conditions, and its direct and indirect costs. Also, all of the benefits and costs, immediate and future, must be measured in terms of both symbolic and tangible effects.

The utility theory has been used to explain the effectiveness of those policies whose impact is primarily economic. This theory refers to the net benefit or loss an individual expects. Johnson and Canon (1984, p. 220) offer the basic postulate of utility theory:

A person with the capacity to either comply or not comply with a given law will not comply when the utility of non-compliance is greater than the utility of compliance.

Johnson and Canon (p. 200) also refer to the work of Rogers and Bullock (1972), who applied utility theory to help explain the desegregation of southern schools. They found that as the financial costs of maintaining segregated schools increased (i.e., the loss of federal funds under the
1964 Civil Rights Act), resistance declined.

Yet, as Johnson and Canon note, financial sanctions alone were not sufficient in overcoming resistance. Segregation ended when federal executive agencies and the courts actively pursued change and developed additional sanctions.

Considerable overlap exists between the executive branch and the courts in both formulating and carrying out public policy programs (Horowitz, 1981). Section 504 requirements, for instance, may be enforced by the federal courts through private lawsuits claiming discrimination on the basis of handicap.

Federal equal opportunity laws gained considerable strength as compliance mandates when the courts applied due process and equal protection requirements to educational programs during the 1960s and 1970s (Mayer, 1982). Compliance is particularly acute at public postsecondary institutions since the actions of their administrators constitute state action, which under the Fourteenth Amendment requires constitutional protection of a property or liberty interest (Miles, 1987).

Although the courts play a major role in public policy interpretation and enforcement, problems occur when the judicial decision lacks clarity, organization, or public support (Spaeth, 1979). For example, evasive legalistic maneuvers were often employed to resist public school desegregation because the Supreme Court's mandate was so vague
Measuring the impact of court decisions on public policy is very difficult (Johnson & Canon, 1984). No dominant theory exists to explain impact, decisions often carry a great deal of latitude for interpretation and implementation, and they are not self-implementing.

To determine the effectiveness of judicial decisions, LaNoue and Lee (1987) developed an analytical framework that begins by examining the litigation process and any changes in issues, actors, tactics, and impacts. To determine what occurs after a judicial decision is rendered, Johnson and Canon (1984) suggest that an attempt be made to identify whether and when compliant responses occur, and to explain reactions and consequent behavior.

Agreement has not been reached concerning the effectiveness of section 504(E) as a compliance statute. Efforts to measure the impact of its implementing regulations on postsecondary education have been few.

As previously mentioned, academic officials feared that section 504 and the other civil rights laws would be costly, infringe upon academic freedom, and jeopardize academic standards. Reliable estimates of compliance costs are not available (Welch-Wegner, 1983). Also, there is no proof that these laws have infringed upon academic freedom or jeopardized standards (Edwards & Davis-Nordin, 1981).

Marion and Iovacchini (1983, p. 132) report that the
findings of their study indicate "colleges and universities across the country have made a serious effort to carry out the regulations implementing section 504." Since the enactment of section 504(E), the rights of disabled students are better protected, access to academic programs have improved, and enrollments are growing (Yanok, 1987; Fishlock 1987).

Other studies suggest that persons with disabilities have not been afforded equality of educational opportunity. Mangrum and Strichart (1985), Benz and Halpern (1987), Mithaug (et al., 1985), and Edgar (1987) report the number of disabled persons attending postsecondary schools does not compare favorably with that of the nondisabled. They each found that few persons with disabilities who have the desire and ability to attend college actually enroll.

Summary Remarks to The Review of The Literature

Historically, American higher education was viewed as a privilege and not an inherent right. National affairs of the 1960s, along with interest group pressure and evolving federal jurisprudence, placed the ideal of equal education in the center of public policy making. As a result, higher education became a recognized right of all who have the desire and ability, and was no longer considered a privilege to be enjoyed by only an elite few.

Following congressional and judicial action prohibiting discrimination on the basis of race and gender, section 504 of the 1973 Rehabilitation Act became the first federal law
to recognize education as a civil right of disabled persons. Subpart E deals specifically with postsecondary education.

Similar to the other civil rights policies affecting higher education, noncompliance with section 504(E) could result in the loss of federal funding. In addition, individuals may file a civil suit for proper redress.

Academic leaders, opposed to these federal regulations, expressed concern over threatened academic freedom, infringement upon institutional sovereignty, the costs of compliance, and a decrease in the quality of both students and academic programs. Whether and to what degree these fears have been realized is not clear.

Since its inception, reaching agreement on the interpretation of section 504(E) has been difficult. Similar to the other civil rights laws, section 504(E) contains vague wording and is ambiguous in scope.

Likewise, considerable differences of opinion exists among scholars concerning the effectiveness of section 504(E) as a compliance mandate and its overall impact on postsecondary education. Some researchers suggest this statute has resulted in improved access and accommodation for students with disabilities. Others disagree, saying equality of educational opportunity has not been achieved.

To comprehensively examine section 504(E), this study considers some of the strategies used in public policy research. Knowing how and why a policy was generated
provides important information necessary for understanding and analyzing that policy, and for improving the development of new policy. Investigated are the political processes of section 504(E) development, the interplay between government entities, as well as the influence of special interest groups, key actors and major social events.

Researchers agree that analyzing the implementation and impact of public policy is difficult largely because of the diverse variables to be considered. This study attempts to determine whether the stated purposes of section 504(E) have been met, and to identify the statute's effects on higher education. To do so, it examines the implementing regulations, considers environmental or political system changes, and determines both tangible and symbolic effects on target and non-target situations or groups.
CHAPTER THREE: THE PROCEDURE

The Framework

This study documents the processes by which federal policy pertaining to higher education evolves through an historical case study analysis of the development and implementation of section 504(E) of P.L. 93-112. Policies are conditioned by both internal and external environments. Therefore, many variables can affect a policy's development, implementation, and impact.

To investigate the development and implementation of section 504(E), this study examines: the political processes; complex interplay of Congress, the courts and administrative agencies; influence of key actors and special interest groups; major social issues; response by the academic community; and the impact on higher education.

The Data

To determine the processes by which section 504(E) has evolved, this study examines that law, related federal legislation, federal court decisions, and the response of the academic community. The data and sources of evidence are listed below. A discussion concerning the relationship of this data to section 504(E) development and implementation is presented in the next section dealing with research design and analysis.
Federal Legislation

The primary data includes copies of section 504(E) and other related federal laws, along with their corresponding regulations, reports from congressional hearings, and subsequent amendments. Sources of evidence are the Federal Register, the Congressional Record, and memorandums issued by the U.S. Department of Education and Office for Civil Rights.

The secondary data consists of authoritative summaries and interpretations of section 504(E) and the other related federal legislation. Sources of evidence include the writings of legal professionals and higher education scholars, as found in texts and journal publications (e.g., Congressional Digest; Congressional Quarterly Weekly Report).

Federal Court Decisions

Federal court records of cases involving section 504(E) issues are the primary data. Sources of evidence are The Federal Supplement and the Federal Rules Decisions (U.S. District Courts); The Federal Court Reporter, Second Series (U.S. Circuit Court of Appeals); the United States Reports and the Supreme Court Reports (U.S. Supreme Court).

Response of the Academic Community

The primary data includes statements issued by the American Council on Education and other higher education associations regarding section 504(E), as well as records from the Office for Civil Rights and the federal courts concerning compliance. Sources of evidence are statements found in professional journal publications, OCR compliance data, and publications of federal court records.

The secondary data consists of authoritative interpretations of the impact of section 504(E) on postsecondary education, enrollment figures of students with disabilities, and the development of on-campus support services. Sources of evidence include scholarly journals and related works (e.g., Chronicle of Higher Education; Journal of College and University Law), publications by the HEATH Resource Center and the Association on Higher Education and Disability (AHEAD), as well as data from the U.S. Department of Education and the National Center for Education Statistics.

Research Design and Analysis

To document the processes by which section 504(E) has evolved, the research is divided into three distinct periods: (1) antecedents to section 504(E); (2) section 504(E) development; and (3) section 504(E) implementation.

Antecedents to Section 504(E)

Chapter Four covers a period from the 1960s up to the development of section 504(E). The main objective is to
determine the reasons why this statute was considered necessary and identify the social events, actors, organizations, and other factors that played a significant role leading to the creation of section 504(E).

Several sources of information are examined, including: studies of the civil rights movement and other national events; data concerning the enrollment and accommodation of disabled students in educational settings; records of federal involvement (i.e., legislation, executive orders, and court rulings); and a review of scholarly research.

The antecedents serve as a starting point in identifying the early stages of evolving jurisprudence associated with section 504(E), and for determining the statute’s impact on postsecondary education. Results of this chapter provide a response to the following research question:

What factors, particularly during the 1960s and early 1970s, led to the development of section 504(E)?

Section 504(E) Development

Chapter Five examines how section 504(E) was developed, who was involved in that process, the significant issues, and specifically what the legislative mandate requires. For the purpose of this investigation, the period of section 504(E) development begins with the enactment of the 1973 Rehabilitation Act and ends with the issuance of section 504(E)’s implementing regulations.

Dialogue from this period, published statements,
congressional records of proceedings, and testimonies reveal the various stands on policy by the involved groups (i.e., academic community, federal government, and disability advocates). Also identified are the pressing issues and controversies associated with section 504(E) development.

Another objective is to critically examine section 504(E) to determine its intent, regulatory requirements, and potential to impact postsecondary education. Statutory language, including specific terms and definitions, are analyzed along with the provisions and key aspects of section 504(E). Additional sources of information include scholarly works that examine and critique this statute and its implementing regulations.

Other federal legislation closely related to section 504(E) are identified and analyzed to determine what influence, if any, these laws have had on the development of section 504 and its implementing regulations. Likewise, this study examines the similarities, differences and areas of overlap that exist between those laws and section 504(E) as they pertain specifically to postsecondary education and students with disabilities.

Results of this chapter provide a response to the following research question:

How did section 504(E) become law, from the enactment of the 1973 Rehabilitation Act to the issuance of its implementing regulations in 1977?
Section 504(E) Implementation

Chapter Six encompasses a period from the issuance of section 504(E)'s implementing regulations through to the passage of the 1990 Americans with Disabilities Act. The overall objectives are to determine the reaction of the academic community to section 504(E), any modifications to this statute by the courts and/or legislative amendments, and the effect of section 504(E) on postsecondary education.

This study examines published statements and legal documents presented by the academic community in response to section 504(E). The purpose is to identify the major concerns of college officials and determine their willingness to comply with this federal policy.

To identify judicial modifications of section 504(E), this study reviews records of federal court cases involving section 504 issues, beginning with *Southeastern Community College v. Davis* (1979). Each case is briefed, and significant historical events related to the case as well as interest group involvement are noted. Scholarly works and law reviews assist in interpreting the judicial decision and determining its potential to impact postsecondary education.

An examination of amendments to section 504(E) reveals legislative modifications to this statute. Congressional records indicate the need for change, and thus serve to help identify the strengths and limitations of section 504 as a compliance regulation. Also, relevant social events and
changes within the political system associated with any of these amendments are noted.

To identify the effect of section 504(E) on postsecondary education, studies of institutional compliance with the implementing regulations are reviewed. Compliance is also determined by examining complaints processed by the Office for Civil Rights (U.S. Department of Education) and the outcomes of related federal court cases.

Another area of investigation involves looking at the estimates of students with disabilities enrolled in colleges and universities during the implementation period. These annual figures are also compared with earlier enrollments and then analyzed to determine if periods of significant increases or decreases are associated with section 504(E), or the result of some other possible factor.

Institutional response to section 504(E) is also determined by tracing the evolution of on-campus services for students with disabilities. Likewise, the creation of the HEATH Resource Center and AHSSPPE (AHEAD), as well as changes in regulatory agencies are presented. Information and consultative assistance are provided by the U.S. Department of Education (OSERS, OSEP, OCR), HEATH Resource Center, and AHEAD.

Results of this chapter provide a response to the following research question:

What has been the overall effect of
Chapter Seven evaluates and synthesizes the findings to document the processes by which section 504(E) has evolved. Also presented are the implications of this study along with recommendations for future research.
CHAPTER FOUR: HISTORICAL ANTECEDENTS TO SECTION 504

Ensuring postsecondary education opportunities for disabled persons was not a major public policy issue largely because there was no real demand for it. Instead, section 504(E) was an out-growth of earlier rehabilitation laws, the civil rights movement, and federal action to establish special education at the lower grades.

Prior to section 504 of the 1973 Rehabilitation Act, persons with disabilities were commonly viewed as being limited in educational ability and incapable of achieving competitive employment. Most disabled persons were therefore not expected or encouraged to attend college. No laws mandated that postsecondary education be accessible. Of the few disabled students on campus, most found that college did not offer special support services.

Advocates for the disabled were more concerned about establishing educational programs at the graded schools. Following the lead of other minority groups that were successful in achieving federal antidiscrimination measures during the 1960s and early 1970s, these social activists turned to Congress and the courts for similar protection.

As the federal government began to recognize the educational rights of disabled children, colleges and universities had become increasingly accessible to racial
minorities, the disadvantaged, and women. The civil rights laws, related court decisions, an increased significance of the college degree, and improved educational services for students with disabilities at the lower grades set the stage for the development of section 504(E).

The following discussion first examines the education of persons with disabilities prior to 1960 and the historical events that established the principle of educational opportunity. Next, the period from 1960 to 1972 is investigated to determine the inclusion of disabled students in postsecondary education, the significance of the civil rights movement and other major events, federal involvement in higher education, and the growth of special education.

**Noteworthy Events Prior To 1960**

Before the 1970s, the disabled were largely excluded from education at all levels. As other minorities gained entry through federal intervention during the 1950s, parents and advocates of disabled children pressed local officials for educational services at the lower grades. With few opportunities available at the public schools, having access to a postsecondary education was not yet a priority. Many disabled adults instead received job training services that were established by federal vocational rehabilitation laws.

**1800s To Early Twentieth Century**

Early American colleges typically served an elite few (Thelin, 1982). Persons with disabilities, racial minori-
ties, women, and the economically disadvantaged were often excluded. Educators and society commonly viewed the disabled as being limited in their ability to learn and to work. Considered a burden, most persons with disabilities were therefore removed from the mainstream of American life.

Certain events of the nineteenth century, however, planted the seeds of equal educational opportunity for all people. Eventually, these roots would extend to persons with disabilities.

Along with the humanitarian movements of the 1800s, the public began to exert pressure on higher education to become more accessible to the general population (Levine, 1985). Colleges during that period were expected to be democratic, and it was widely believed that "unless an institution served all men equally, it served America poorly" (Rudolph, 1962, p. 203).

Attempts were also made by the federal government to promote democracy in education. Although the government is limited by the Tenth Amendment in its ability to influence education, intervention may occur through: (a) the acceptance of federal grants by educational institutions; (b) standards or regulations authorized by Congress; and (c) court decisions constraining actions that come in conflict with constitutional rights and freedoms (Alexander & Alexander, 1985, p. 58).

An example of early federal action to promote
educational opportunity includes the Morrill Acts (P.L. 37-130, 1862; P.L. 51-84, 1890), which intended to make higher education more accessible to persons of various social classes, women, and blacks. Also, President Lincoln in 1864 signed legislation which chartered the Columbia Institute for the Deaf and Dumb and the Blind (P.L. 38-52). Although a separate school, the Columbia Institute, later known as Gallaudet College, would become a respected institution.

The needs of persons with disabilities gained national attention with the return of injured World War I veterans. In 1918, Congress passed the Soldiers’ Rehabilitation Act (P.L. 65-178). Two years later, the Citizens Vocational Rehabilitation Act (P.L. 66-24) was enacted. Together, these statutes provided counseling, job training and placement, and prosthetic devices for disabled persons (Mercer, 1979). The Social Security Act of 1935 (P.L. 74-271) also offered income and rehabilitative services.

Despite these early efforts, data is not available to suggest that a significant number of persons with disabilities attended postsecondary institutions. Most disabled children, still believed to be unemployable as adults, either received an inadequate education in special classes or no education at all (Davies, 1925; Aiello, 1976). College was not, therefore, viewed as a realistic goal.

1940 To 1950

Injured soldiers returning from World War II sparked
renewed public interest in the disabled. Job training and rehabilitative services were extended under the Vocational Rehabilitation Act of 1943 (P.L. 78-113). Even though many of these services were provided in settings away from mainstream society, the Act also offered financial assistance, materials, and devices that would allow disabled clients to participate in regular postsecondary training programs.

At the University of Illinois-Champaign, disabled veterans helped establish the first support program for students with severe handicaps (Hartman, 1986). This program served as a prototype for a handful of colleges that initiated similar programs in the 1950s and 1960s.

Despite such promising achievements, persons with disabilities were still largely excluded from educational services at all levels (Ysseldyke & Algozzine, 1984). One report estimates that in 1945 only 300 hearing-impaired students were enrolled in college (Walter & Welsh, 1986, p. 2). Few postsecondary institutions were accessible to the physically disabled during the 1940s (Barris, 1980).

After the war, the federal government again started to promote educational opportunity. Congress passed the Servicemen’s Readjustment Act of 1944 (P.L. 78-346), the G.I. Bill of Rights, to provide direct financial assistance for returning soldiers to attend college.

In 1947, President Truman’s Commission on Higher Education for Democracy called for significant changes in higher
education. Among its recommendations, the report proposed the elimination of economic, religious, and racial barriers to equal access (Levine, 1985).

More significant, however, was the changing relationship between the federal government and postsecondary institutions. During the war, the government enlisted major universities in national defense and for scientific research and technological development (Kerr, 1972). In effect, the university became a contractor (Seabury, 1979). The government determines which programs are in the national interest, and the colleges are the vehicles for their implementation (King, 1975).

As a contractor, if the university does not comply with certain federal regulations it could lose federal funding. This approach, as the principal basis for contractual compliance with government directives, would later be utilized in the federal civil rights laws, including section 504.

1950 To 1960

The decade of the fifties produced the principle of equal educational opportunity, with a particular focus on racial minorities. Although this landmark achievement would eventually benefit the disabled, and some progress was being made on their behalf, the educational needs of persons with disabilities had not yet reached the national spotlight.

Concerning postsecondary education, Congress appropriated funds for the operation of Gallaudet College in 1954
(P.L. 83-420), and a few support programs for disabled students were initiated on some of the newer campuses (Hartman, 1986). A 1957 national survey estimated there were 1,000 blind and vision-impaired college students (Kirchner & Simon, 1984, p. 79). Data about other disabilities were not found.

With the lack of appropriate educational programs for disabled children at the graded schools, only a small number would have likely sought a college education. Certain national events that occurred during this decade, however, would lead to increased educational opportunities for all neglected populations, including the disabled.

The federal courts began to recognize education as a constitutional right. Rejecting the doctrine of "separate but equal," the Supreme Court in *Brown v. Board of Education* (1954) established the principle of equal educational opportunity for children of all races under the equal protection clause of the Fourteenth Amendment. In *Fraiser et al. v. Board of Trustees of University of North Carolina* (1955), a federal court declared that the principles enunciated in *Brown* were applicable to higher education.

Discrimination on the basis of race was no longer tolerated by the judiciary. The years of the Warren Court, 1954-1969, provided "the high-water mark in the progression of civil liberties in all American history" (Ratliff, 1972, p. 28). A great number of individuals and groups decided to
press for constitutional protections in every aspect of American life.

In the wake of the *Brown* decision, parents of disabled children and such newly formed advocacy groups as the Council for Exceptional Children and the Association for Retarded Citizens, pressed public educators to acknowledge the educational needs of youth with disabilities (Schwartz, 1979). Pressure also came from the residential schools that could no longer accommodate the growing number of disabled persons (Heward & Orlansky, 1988). Increasingly, special classrooms began to appear in the public schools.

In addition to a growing national emphasis on increased educational opportunity, the launching of the Sputnik satellite by the Soviet Union in 1957 made many citizens question the quality of American education (Levine, 1985). The public demanded reform, and Congress responded by passing the National Defense Education Act of 1958 (P.L. 85-864).

A major goal of the Act was "to produce more technically trained people to help win the Cold War" and "to stop the waste of talent" (Rivlin, 1979, p. 8). Student financial assistance was offered to assure that no person of ability will be "denied an opportunity because of financial need" (King, 1975, p. 6). The federal government appeared to be moving in the direction of guaranteed educational opportunity at the postsecondary level.
The Right To Education: 1960-1970

The 1960s witnessed a rapid democratization of education at all levels. Despite the growth of special education programs and a slight increase in college attendance, persons with disabilities still lacked equal opportunities. Other minority groups were winning educational rights as the result of strong public opinion and the protective action of Congress, the federal courts, and presidential administrations. These combined forces established a pattern of public policy making that would also be seen in the development of section 504(E).

1960 To 1964

Nationally, the number of disabled students in postsecondary education during the early 1960s continued to be very small (Rusalem, 1962). Still largely excluded from the public schools, most disabled persons were not academically prepared to enter college, and little was known about what they were capable of achieving. Advocates and parents of disabled children continued to focus their attention on establishing educational programs at the graded schools.

Since so few disabled persons enrolled in college, their needs were often overlooked by administrators and the faculty (Rusalem, 1962). Because colleges were not compelled by law to be accessible and accommodating, any special programs and services, as well as the extent of such services, were the result of campus initiative and choice.
For example, the Physically Disabled Students' Residence Program at the University of California-Berkeley was established in 1962 to assist quadriplegic students in developing independent living skills. The campus, however, was inaccessible to persons in wheelchairs (Lifchez & Trier, 1979).

Changes were on the horizon, however. Both President Kennedy and Vice President Humphrey had a mentally retarded family member, and this circumstance was "possibly the biggest assist that the handicapped received in terms of public acceptability, (and) the stimulus for further legislation" (La Vor, 1979, p. 99).


By 1963, 5,600 school districts were operating some type of special education programs (Burgdorf, 1980, p. 56). Compared to 1,500 school districts in 1948 and 3,600 in 1958, this is a significant increase. With more disabled children receiving educational services in the public schools, a greater number of students would eventually be prepared to pursue a postsecondary education.
At the same time, colleges and universities were beginning to face significant pressure from the public and the federal government to become more accessible to a wider range of people. A growing emphasis on equality of opportunity "firmly established the idea that a college education was not the preogressive of the elite few, but an intrinsic right of all who desired it" (Laudicina & Laudicina, 1976, p. 290).

Several factors helped weaken the barriers to a higher education, including an increase in the importance of the college degree, pressing social issues, and a changing relationship with the federal government. The disabled stood to benefit from the gains made by other nontraditional student populations.

National employment trends began to move away from agriculture and unskilled labor (Jencks & Riesman, 1968). An increase in specialized business and professional areas generated the need for persons with a college degree. As a result, more people began to seek a means of upward economic and social mobility through higher education (Laudicina & Laudicina, 1976). By 1964, college enrollments reached 40% of the 18-to-21 age group (Levine, 1985, p. 511).

Along with the changing public attitude, the courts likewise emphasized the increased importance of a college education. In a separate dissent to the decision of Commonwealth ex rel. Howell v. Howell (1962), Judge Montgomery
remarked that "competition in the world today compels children to have more than a high school education if it is possible to secure it."¹

The landmark decision in Dixon v. Alabama State Board of Education (1961) indicated that the right to a college education is a personal interest in need of protection. The Fifth Circuit Court of Appeals stated:

> It requires no argument to demonstrate that education is vital, and, indeed, basic to civilized society. Without sufficient education the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens.²

This statement "marked an advance step for the concept of education as a human right, as well as for the idea of educational opportunity as a state and national necessity" (Chambers, 1964, pp. 32-3). Since Dixon viewed public colleges and universities as instrumentalities of the state, the court noted that they are therefore subject to constitutional requirements (Laudicina & Tramutola, 1976).

Although some postsecondary institutions continued to discriminate against racial minorities, the disadvantaged, and/or women (Jencks & Riesman, 1968; Edwards & Davis-Nordin, 1979), change was inevitable (Seabury, 1979). The federal government, with pressure from a public that continued to increase its demands for the removal of barriers to individual opportunity, assumed a more direct and active
role in higher education to ensure greater accessibility.

A pathway for federal intervention was created in 1961 when the House Committee appointed the Special Subcommittee on Education with standing jurisdiction over higher education bills (King, 1975). Also, the Higher Education Facilities Act of 1963 (P.L. 88-204) served to "delineate higher education as a separate policy area" (Pettit, 1963, p. 13). The Bureau of Education was established to help administer the new higher education policies (King, 1975).

Also, the federal government in the early 1960s turned to the university to help solve such social problems as poverty, racial discrimination, unemployment, and other national afflictions (Bok, 1985). As the university became a social laboratory, its own problems were revealed (Seabury, 1979).

More was being demanded of universities by the public and the government at a time when institutional expenditures were also increasing. In addition, many persons could not attend college because they lacked the necessary financial resources. With the demand for academic service and universal access, federal funding became a major policy issue.

Federal support began to move away from specific groups and activities in the national interest to broad assistance for both students and institutions. Increased federal funding was provided to help institutions cope with spiraling enrollments, to meet the need for trained manpower, and to
expand research (Gladieux & Wolanin, 1976). In 1960, over 100,000 students received federal loans and scholarships (Kerr, 1972; Rudolph, 1962).

Among other things, legislative proposals in 1963 called for a comprehensive program of federal aid to expand educational opportunity at all levels (Kerr, 1972). By the mid-1960s, institutions could receive federal funding only if they promised not to discriminate on the basis of race. Colleges stood to lose their funding if they failed to comply with this condition.

1964 Civil Rights Act

The public demand for legislation to end racial discrimination led to the enactment of the 1964 Civil Rights Act (P.L. 88-352). The development of this law established a passageway for advocates of the disabled to follow, and a pattern for the making of federal antidiscrimination policies. Likewise, the Act's language and enforcement provisions created a model for section 504.

For almost a decade after the Brown decision, racial segregation and discrimination continued to be practiced. The federal courts helped to restrict discrimination by state and local governments, but only Congress could prohibit discrimination practiced by non-governmental officials (Dye, 1972).

Through nonviolent action aimed at drawing attention to the need for federal antidiscrimination measures, black
elites won widespread support from the white liberal community (Johnson & Canon, 1984). President Kennedy proposed strong civil rights legislation in 1963, and President Johnson reiterated that request in his first presidential address before Congress (Salamone, 1986).

The Civil Rights Act of 1964 was passed by Congress. Through this act, every federal department and agency is required to take action to end segregation in all programs and activities receiving federal financial assistance. Titles IV and VI specifically promote equal education opportunity. Title VI would later serve as a model for other civil rights laws that protect the educational rights of women and the disabled (Salamone, 1986).

Title IV authorizes the Attorney General to bring desegregation suits against state and local governments upon receipt of a written complaint by aggrieved individuals. Title VI is a "spending power" statute which provides the remedy of withdrawal of federal funds if unlawful racial discrimination is proved (Miles, 1987). Title VI reads:

No person in the U.S. shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Title VI authorized federal funding agencies (such as DHEW) to investigate complaints, conduct compliance reviews, and begin enforcement proceedings. Each department could
ensure compliance by refusing financial assistance to any recipient found in violation (after a finding on the record and an opportunity for a hearing), or "by any other means" under the law. One such alternative entails reliance on the courts since the recipients, by signing an assurance of compliance as a condition for receiving funds, are thus legally bound not to discriminate.

Title VI "put teeth into the enforcement of the Brown mandate" (Salamone, 1986, p. 58). With the Civil Rights Act of 1964, progress was made toward achieving racial desegregation. Key variables included the broad powers granted by the Attorney General to bring desegregation suits and the termination of federal funds as a sanction for noncompliance (Johnson & Canon, 1984). Given this success, advocates for the disabled would later press for similar measures.

1965 To 1970

The civil rights movement raised public consciousness on equalizing educational opportunities for all neglected groups. Although the demand for a college education by the disabled remained low throughout the late 1960s, events of this period served to lay the foundation for their increased participation.

Significant progress was made toward ensuring educational services for the disabled at the public graded schools. Also, postsecondary institutions had become more accessible to other nontraditional student groups due to
public pressure and their increased vulnerability to federal directives as a result of a rising dependence on federal funds.

During the second half of the 1960s, few persons with disabilities sought a college education (Walter & Welsh, 1986). In 1965, an estimated 75% of all disabled children continued to be excluded from the public schools (Salamone, 1986, p. 143). Without a preparatory education, college was not a realistic goal. The most pressing concern for parents and advocacy groups was the provision of educational services in the lower grades.

Congress responded to strong pressure from the National Association for Retarded Citizens and the Council for Exceptional Children with the 1965 Elementary and Secondary Education Act (P.L. 89-10). This Act, and subsequent amendments in 1966 and 1967, authorized funds to initiate and improve educational programs for disabled children.6 Other federal laws established model demonstration programs,7 authorized funds for teacher training,8 and provided vocational education services.9

The judicial system also began to address the education of disabled children. In 1967, the Wisconsin Attorney General issued an opinion which indicated that the right to a free public education was guaranteed by the state constitution to every child, including those with disabilities.10

The District Court in Wolf v. Legislature of the State
of Utah (1969) held that the plaintiff mentally retarded children must be provided a free and equal education within their resident school district. Paraphrasing the Supreme Court's holding in Brown, the court stated:

> Education...is a fundamental and inalienable right and must be so if the rights guaranteed to an individual under the... Constitution are to have any real meaning. Today it is doubtful that any child may be reasonably expected to succeed in life if he is denied the right and opportunity of an education.\[11\]

Actions by Congress and the courts increased the confidence of parent and advocacy groups that their efforts were beginning to pay off (Meyen & Skrtic, 1988). For the 1968-69 academic year, the Bureau of Education for the Handicapped reported that 38% of an estimated seven million disabled children had received special education services (Lippman & Goldberg, 1973, p. 20). A 13% increase over a three-year period, improving educational opportunities for the disabled in the public schools was becoming a reality.

Given a successful pre-collegiate special education experience, the aspirations of many disabled students would eventually broaden to include a postsecondary education. Furthermore, a rising number of persons from other minority groups were attending college largely as the result of public demand, federal legislation, and institutional need.

During the late 1960s, the public and the federal government pressed colleges and universities to become more
accessible to a wider population (Gladieux & Wolanin, 1976). With increased competition among postsecondary institutions for limited resources, many colleges had little choice but to loosen their traditional values and attitudes (Mayhew, 1968).

Federal involvement in higher education occurred through two main avenues, (1) student assistance programs and (2) funding made available to postsecondary institutions. Support to students not only resulted in more persons seeking access, it also created increased competition among colleges for limited federal monies.

The Higher Education Act of 1965 (P.L. 89-329), for instance, provided funds for the recruitment of disadvantaged students and established student financial aid based solely on exceptional need. The Higher Education Amendments of 1968 (P.L. 90-575) created a program of special services for disadvantaged students which included remedial instruction, counseling, and other assistance.

With the availability of student financial aid and special support services, the demand for a college education among the general population increased. New campuses, particularly community colleges, were being constructed to accommodate growing enrollments (Hartman, 1986; Kerr, 1982).

Concerned about sustaining academic quality, some postsecondary institutions continued to control access (Jencks & Riesman, 1968; Thelin, 1982). Most universities and
colleges, however, could no longer afford to remain exclusive (Levine, 1968).

Postsecondary institutional expenditures tripled during the 1960s, from 7.7 to 27.1 billion dollars, while enrollments on many campuses increased only slightly due to the larger number of colleges available (Millington, 1979, p. XVII). Major sources of institutional income decreased their annual yield as they were being affected by upward cost pressures and a steeper rate of inflation in the general economy (Gladieux & Wolanin, 1976). Colleges were not only competing for students, but also for federal aid.

Although federal expenditures for higher education rose from $655 million in 1956 to $3.5 billion by 1966 (400% increase), the funding supported a broader variety of programs which included student aid, facilities construction, and research (Ashworth, 1972). Also, escalating costs of the Vietnam War meant a slowing in the growth in the rest of the national budget (Rivlin, 1979). Federal funds available to individual institutions were therefore limited.

As colleges became increasingly dependent on federal monies, compliance with federal mandates that emphasized equal educational opportunities, like the 1964 Civil Rights Act, became more significant (Edwards & Davis-Nordin, 1979). Regardless of the amount available, few if any postsecondary institutions were willing to lose their federal funding.

Higher education became a buyer's market, and students
were a "competing constituent force" as well as a "necessary economic and social condition for institutional survival" (Laudicina & Laudicina, 1976, p. 290). Concerned about rising costs, decreasing enrollments, compliance with federal mandates, and public image, many campuses opened their doors to nontraditional groups. Bok (1986, p. 52) observed a steady movement toward a more diverse student body:

> Since the late 1960s, racial diversity has added a prominent new theme to college admissions, with the combined proportion of Hispanic, black, Asian, and Native American undergraduates now exceeding 10 and sometimes even 20 percent of the student body in most university colleges.

After the assassination of Martin Luther King in 1968, "colleges and universities across the country pledged themselves to new efforts in expanding opportunities for blacks and other minorities" (Gladieux & Wolanin, 1976, p. 19). Many institutions established specific targets, such as doubling the enrollment of these students. Some colleges even became interested in the low-academic ability students, and offered a variety of remedial programs (Levine, 1985).

By the end of the 1960s, neither the public, the federal government nor even many within the academic community considered a college education as a privilege to be enjoyed only by an elite few. Persons with disabilities would soon join the ranks of other nontraditional student groups who gained access during this period.
Promising Outlook: 1970-1972

The development of public policy to ensure the disabled equal opportunities for a postsecondary education loomed on the horizon. Colleges had become more accessible to other minorities, a growing number of disabled students were completing high school programs, and more of these graduates were pursuing a college degree to secure employment. While many institutions did not prevent their admission, few campuses were physically accessible or accommodating.

Enrollment and Accommodation of Disabled Students

So few persons with disabilities attended college during the early 1970s that they could have been considered an "invisible minority" (McLoughlin, 1982, p. 240). In fact, a 1971 report sponsored by the Carnegie Commission concerning minority enrollments in postsecondary education did not even mention the disabled (Peterson, 1971).

Although the disabled represented a small proportion of college students, their numbers were growing. For instance, the enrollment of hearing-impaired students rose from about 1,000 in 1965 to 1,500 in 1970 (Walter & Welsh, 1986, p. 4).

A proportional increase in students with other disabilities is likely because the number of disabled persons within the general population rose as a result of the Baby Boom after World War II and at least two significant rubella epidemics (Walter & Welsch, 1986). Also, the return of soldiers injured in the Vietnam War contributed to the number
of disabled college students (Tuscher & Fox, 1971).

Furthermore, rehabilitation counselors encouraged their disabled clients to attend college (Tuscher & Fox, 1971). Typically unemployed or underemployed, with substantial living expenses, disabled adults needed a college education to improve their job prospects (Williams, et al., 1971).

Evidence that more disabled persons were attending college is found in the emergence of support services being provided by a growing number of institutions. In 1970, for example, the first full-fledged college compensatory assistance program for learning disabled students was initiated at Curry College in Milton, Massachusetts (Mangrum & Strichart, 1985). That same year, a comprehensive support program for students with disabilities was established at the University of California-Berkeley.12

Stillwell and Schuller (1973, p. 419) report that other exemplary postsecondary institutions responded to the needs of disabled students "by modifying their facilities to eliminate many architectural barriers." Examples cited include Hofstra University, St. Andrews Presbyterian College, University of Illinois, University of Missouri, and Wayne State University.

Although the need and desire for a higher education by persons with disabilities was apparent and increasing, and some institutions responded favorably to their needs, many college campuses were not accessible nor accommodating
during the early 1970s. Despite their growth, disabled students still represented a small student minority and were not yet a major concern of the academic community.

In Kentucky, college administrators had not considered the needs of the disabled because few have ever applied for admission (Stilwell & Schuller, 1973). Although disabled students were admitted for course work, they had to participate almost as if not disabled.

A national study yielded similar results. Mahan (1974, p. 52) found that while nearly 75% of the institutions studied were generally willing to enroll the disabled, few made an effort to accommodate specific disabilities or provide accessible facilities. With such a small number of disabled students on campus, this did not seem practical.

Establishing Educational Rights

In addition to the low demand for a college education by persons with disabilities, no law required postsecondary institutions to be accessible and accommodating. College officials were therefore not compelled to address the needs of disabled students. Greater attention to the disabled would be raised once they achieved the legal right to an education.

In 1970, over half of all disabled children of school-age were still being excluded from the public schools (Robinson & Robinson, 1976). Parents and advocacy groups pressed the federal government to take necessary steps in
ensuring access to a public education for all disabled youth (Meyen, 1978).


Yet, the Act did not offer legal protection. A major breakthrough came with the consent decree in *PARC v. Commonwealth of Pennsylvania* (1972), followed by a court order in *Mills v. Board of Education* (1972). Taken together, both courts found that disabled children have a constitutional right under the equal protection clause of the Fourteenth Amendment to a free, appropriate public education in the least restrictive setting.

The *PARC* and *Mills* decisions meant that disabled children in these cases had the legal right to be provided an education at the lower grades that is based on their individual needs. Thus, some students could receive college preparatory instruction with their nondisabled peers in the regular classroom. Most importantly, however, these rulings opened the door for the development of a comprehensive civil rights law.

Once the courts declared that a public school education is the constitutional right of persons with disabilities, advocates had the judicial support necessary to approach
Congress and demand that substance be given to that guaranttee through a legislative enactment. Following the example of racial minorities, equal protection under the Fourteenth Amendment could also be extended into other areas of American life, including postsecondary education.

Higher Education and Universal Access

As legal precedents were being established to protect the right of disabled persons to a public school education, colleges and universities were also becoming more accessible to other minority groups. Steps were taken by the academic community to provide equality of educational opportunity, and the disabled would soon request similar treatment.

Barriers to a college education were beginning to fall. The American Council on Education, Newman Task Force, and the Carnegie Commission on Higher Education urged the academic community to be committed to providing equal educational opportunities for minorities, women, and the disadvantaged (King, 1975; Levine, 1985). Bok (1986, p. 107) observed that since 1970, colleges and universities:

...have admitted women and minorities, and even encouraged them to enroll through aggressive recruiting, financial aid, and the use of admissions standards that consciously favor members of disadvantaged groups.

Colleges were competing for students and thus wanted to expand. As institutions became more accessible, enrollments rapidly increased. In 1970, 48% of the 18-to-21 year old
population attended college; compared to 40% in 1964 (Levine, 1985, p. 513).

The expansion in numbers resulted in an expansion of functions. To attract and keep students, colleges and universities responded to their intellectual, personal, and social needs (Bok, 1986). Students were provided a variety of facilities, activities, and services.

Some college officials, however, were concerned about the conscious commitment to universal access. Issues were raised about a decline in quality students, the strain on limited resources, and threatened institutional autonomy.

College entrance test scores were falling, and academic innovations were introduced to allow low-achieving students to succeed (Levine, 1985; Cross, 1976; Ducote, 1985). Providing individualized support services strained limited institutional budgets that were already being affected by a decline in research funding, rising inflation, and a sluggish stock-market that languished endowments (Bok, 1986).

With the push for mass higher education came the intrusion of external forces that threatened institutional autonomy (Duryea, 1988). Federal regulation and the power being asserted by special interest groups to change student demographics and meet the unique needs of nontraditional groups challenged campus leadership (Kerr, 1972). The Newman Task Force (1971) called for the protection of institutional governance.
O'Neil (1972, p. 32), acknowledging external pressures and the corresponding need for protective measures, cautioned institutions to use self-restraint and reminded them of the "urgent need to equalize opportunities that have long been denied to certain groups." Also, because the value and necessity of the college degree was rising, consequences of university action have become more serious.

Congress was considering legislation that would ensure equal educational opportunities and at the same time maintain a strong, independent system of higher education (Rivlin, 1979). Although the inclusion of persons with disabilities in postsecondary education was not yet a policy concern, the provisions of Title IX of the 1972 Education Amendments set the tone for the development of section 504.

Education Amendments of 1972

To ensure equal educational opportunities and provide assistance to both colleges and students in need, Congress enacted the Education Amendments of 1972 (P.L. 92-318). Title IX prohibits sex discrimination. Coupled to Title VI of the 1964 Civil Rights Act, Title IX serves as a model for section 504 in language and enforcement scheme.

In the early 1970s, Congress was being pressed by such groups as the National Organization for Women to improve educational and employment opportunities for females, and by the higher education associations to provide institutional aid (Gladieux & Wolanin, 1976). A concern shared by all was
how to equalize opportunities and not jeopardize institutional autonomy or undermine the system's unique pluralism.

The Education Amendments of 1972 addressed education at all levels. Specific to postsecondary education, the law authorized a restructured and greatly expanded system of federal subsidies to students, $1 billion-a-year in institutional aid grants, and an upgraded research program (King, 1975).

Equal opportunity is implicit throughout the Act in the provisions for community colleges, state planning requirements, and the institutional aid formula (Gladieux & Wolanin, 1976). More options for a postsecondary education were to be made available to a wider range of students. Student aid provisions through the Basic Opportunity Grants, for instance, put purchasing power into the hands of the disadvantaged and allowed them to choose their schools (King, 1975; Gladieux & Wolanin, 1976).

Title IX, the primary tool for defining equal educational opportunity for women, was part of the larger legislative package (Salamone, 1986). Under Title IX, discrimination on the basis of gender is prohibited by all federally assisted educational programs. The succinctly worded statute, molded in language and enforcement scheme after Title VI of the 1964 Civil Rights Act provides:

No person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of,
Title IX is enforced by the Office for Civil Rights (OCR), which has the authority to resolve complaints, conduct compliance reviews, and either terminate funding in the case of noncompliance, or refuse to grant future financial assistance if voluntary compliance cannot be obtained by any other means. The statute expressly stipulates that its provisions do not require preferential treatment toward members of any one sex (Salamone, 1986).

Since Title IX is part of an educational enactment, its prohibition against sex discrimination is limited to educational programs and activities. Although considered a civil rights law, its coverage is therefore more focused than that of the 1964 Civil Rights Act. The statute also contains certain exceptions that reflect opposing congressional interests. Religious, military, and private undergraduate institutions as well as public colleges with a tradition of admitting members of one sex were exempt.

Despite its limitations, Title IX signified the willingness and commitment of Congress to ensure equality of educational opportunity to neglected groups of people. With both Title IX and the 1964 Civil Rights Act, colleges and universities in receipt of federal funds could no longer discriminate against students on the basis of race, national origin, or gender. The stage was set for the enactment of
similar protections for persons with disabilities.

Summary Remarks to Historical Antecedents

Prior to the 1970s, the development of a policy to ensure persons with disabilities access to a postsecondary education was not a high priority. Parents and advocates of the disabled were more concerned about establishing educational services at the public graded schools. Without an appropriate elementary and secondary education, few persons with disabilities were prepared to enter college. As a result, the demand for a postsecondary education by the disabled was low.

Given the small number of college students with disabilities, and the absence of legal mandates to ensure equality of educational opportunity, most campuses were inaccessible to the disabled and did not accommodate their individual needs. Clearly, these barriers also served as a disincentive to pursue a postsecondary education.

The civil rights movement spurred a major national drive to prohibit discrimination in education at all levels. As other minorities continued to gain access through legislative and judicial support, advocates for the disabled also increased their demand for inclusion and accommodation at the public graded schools.

By the late 1960s and early 1970s, legislators and the courts began to recognize that children with disabilities have a constitutional right to a free, appropriate public
education. At the same time, higher education was becoming increasingly accessible to the general public. Federal funding coupled with regulation emphasized, among other things, equalizing educational opportunities.

Together, Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 prohibit discrimination in education against individuals on the basis of race, national origin and gender. Colleges and universities receiving federal financial assistance that are found to be in noncompliance with either of these statutes could lose their funding and even be faced with a lawsuit.

Improvements in education at the graded schools, and the need to develop employment skills, resulted in more disabled persons pursuing a college education. Thus, the demand for a protective policy will also increase. Section 504 would be patterned after Title VI and Title IX.
Notes to Historical Antecedents to Section 504

2294 F.2d 150, at 157.
89-750, Title VI, 80 Stat. 1204-08 (1966); Pub. L. No. 90-
7Handicapped Children’s Early Education Assistance
11Civ. No. 182646, 3rd Jud. Dist. Ct. (Utah, Jan. 8,
1969).
12See University of California at Berkeley, Disabled
Student’s Program (Berkeley, CA: Author’s fact sheet, Jan.
1993).
14sec. 1682-83.
15sec. 1681(a)(5).
CHAPTER FIVE: SECTION 504(E) DEVELOPMENT

By 1972, federal civil rights laws had been enacted to protect racial minorities and women against discrimination in education. Persons with disabilities, still excluded from the public schools and employment, pressed Congress for a similar law. Strong advocates were found in Representative Vanik, Senator Humphrey, and Senator Percy.

Congress passed the Rehabilitation Act of 1973 to provide the disabled with vocational training and job placement services. Section 504 of that law, patterned after Title VI of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments, prohibits discrimination on the basis of handicap by recipients of federal funding.

Section 504 had two major problems in that it lacked effective enforcement procedures and did not specify the extent of its coverage. Schools at all levels interpreted the statute as applying only to employment. When the disabled protested, Congress amended section 504 in 1974 (P.L. 93-516) to include education in its coverage and enforce compliance by terminating federal funds.

However, both the Nixon and Ford Administrations minimized the role of federal agencies in administering and enforcing the civil rights laws. As a result, section 504’s regulations were not issued by DHEW until 1977. Without an
implementing regulation, the statute possessed no real force of law.

Other events significant to the development of section 504's regulations took place from 1975 to 1977. The regulations implementing Title IX (1975) mandated equal treatment of women in all educational programs and activities, and prescribed compliance and enforcement procedures. Section 504's regulations are nearly identical to those of Title IX.

In 1975, federal jurisprudence firmly established the right of disabled children to a free and appropriate public education. The demand for similar rights in postsecondary education would eventually follow as more disabled students were being adequately prepared to enter college.

Following a federal court order in 1976, DHEW began to formulate section 504's regulations with input from the higher education associations. The regulations were issued in 1977 after the disabled protested additional delays. Under subpart E, postsecondary institutions in receipt of federal funds may not discriminate on the basis of handicap in recruitment, admission, and treatment after admission.

The following discussion examines how section 504 became law. Events leading to section 504's implementing regulations are then investigated. The chapter ends with an analysis of section 504(E).

The Making of Public Law 93-112

Section 504 of P.L. 93-112 is the first federal civil
rights law for persons with disabilities. Its inclusion in the Rehabilitation Act of 1973 resulted from pressure on Congress by the disabled to end discrimination on the basis of handicap in public education, job training programs, and employment. Federal jurisprudence, events related to the civil rights movement, and the establishment of educational services for disabled children also led to the development of section 504.

Events Leading to Enactment

In the early 1970s, most persons with disabilities continued to be excluded from public education and employment (Kortering, et al., 1990). The disabled began to press state legislators and Congress for an antidiscrimination law, and many factors favored the success of this effort.

Precedent legislation was in place with the Civil Rights Act of 1964 (prohibiting racial discrimination), and Title IX of the 1972 Education Amendments (prohibiting sex discrimination in education). Federal vocational rehabilitation laws enacted from 1920 to 1968 provided job training and placement services for disabled war veterans and industrially disabled citizens (Wenkart, 1990). Also, Congress and the courts during the late 1960s and early 1970s helped to establish special education in the graded schools.

In addition, the 1960s witnessed a steady increase in the number of Americans with disabilities as the result of a growth in the general population, progress in medical
science, and the return of some 490,000 disabled Vietnam veterans (Kleinfeld, 1977, p. 87). The 1970 U.S. Census reported over 40 million handicapped citizens (Walker & Pomeranz, 1979, p. 116). This large group of people, with unique and diverse needs, had become a force that demanded attention. According to Kleinfeld (1977, p. 87):

No federal legislation specifically barred discrimination against the handicapped, and since state laws were weak and appropriations for enforcement scant, several hundred groups, representing a medley of disabilities, began to exert pressure on legislators for laws that would guard their rights. Individual states began to yield to the handicapped groundswell, pushing through laws that forbade discrimination.

In 1971, Representative Vanik (D., OH) introduced to the House an amendment to Title VI of the 1964 Civil Rights Act. Vanik emphasized that the purpose of the proposed amendment was to make discrimination on the basis of handicap in employment an unlawful practice, "unless there is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise" (Congressional Record, 117, 1971, p. 45,945).¹

To demonstrate the need for the amendment, Vanik listed the failure of residential institutions to provide appropriate treatment, the exclusion of disabled children from the public schools, and the refusal of employers to hire the handicapped (Congressional Record, 117, 1971, p. 45,974).

Vanik also noted that the outcome of *PARC v. Commonwealth of*
PA (1971), in mandating a free and appropriate public education for mentally retarded children, meant that exclusion from educational services was "not only...a discriminatory practice, but it is a violation of due process rights" (*Congressional Record*, 117, 1971, p. 45,975).

The following year, Senators Humphrey (D., MN) and Percy (R., IL) introduced a similar amendment in the Senate (S.3044) "to prohibit discrimination on the basis of physical or mental handicap in federally assisted programs" (*Congressional Record*, 118, 1972, p. 525). Humphrey noted that over one million disabled children were excluded from the public schools, and millions of adults were barred from vocational training and from jobs they could perform well. Demanding congressional action, the Senator stated:

> The time has come when we can no longer tolerate the invisibility of the handicapped in America...I am insisting that the civil rights of 40 million Americans now be affirmed and guaranteed by Congress...These people have the right to live, to work to the best of their ability--to know the dignity to which every human being is entitled...the Federal Government must now take firm leadership to guarantee the rights of the handicapped, through making needless discrimination illegal in programs receiving Federal aid (*Congressional Record*, 118, 1972, pp. 525-6).

Following Humphrey, Senator Percy referred to the proposal of Representative Vanik and to his own Concurrent Resolution introduced earlier with Senator Cook. Hoping to begin a national commitment to eliminate the neglect of
handicapped citizens, Percy stated:

The amendment we are introducing today would realize this commitment, guaranteeing the handicapped equal opportunity to education, job training, productive work, due process of law, a decent standard of living, and protection from exploitation, abuse and degradation (Congressional Record, 118, 1972, p. 526).

On April 7, 1972, Percy and Humphrey introduced Representative Vanik's original bill to the Senate. This bill (S.3458) proposed to amend the Civil Rights Act of 1964 by making employment discrimination because of physical or mental handicap an unlawful practice.

Percy stated that employment "is the key to self-sufficiency and independence...[w]ithout it, equal educational opportunity or social acceptance would be meaningless" (Congressional Record, 118, 1972, p. 11,788). As evidence of the extant discrimination, he reported that of the 27.6 million adults with physical and mental handicaps, only a little over 800,000 were employed.

Humphrey said "the cost of educating an educable handicapped or retarded child is less than one-tenth the cost to society of lifetime institutionalization; and moreover, that training and rehabilitation costs are repaid many times over in taxes on earned income" (Congressional Record, 118, 1972, p. 11,790). Lifetime institutionalization or welfare, according to Percy, costs about $250,000 per person (p. 11,789). But with proper training, at least 90 percent of
disabled persons are potentially employable.

The emphasis on job training and the prohibition of discrimination in employment is significant. Again, Senator Percy said that without employment, equal educational opportunity would be meaningless. In other words, education must lead to eventual employment if it is to have meaning, and employment opportunities must therefore be available if disabled persons are to become self-sufficient and not a burden on society.

The idea of creating a federal civil rights law for the disabled which highlighted job training and employment was certain to win support. Unemployment was a major social concern during this period of rising inflation in the national economy. Also, a passageway had already been established by previous vocational rehabilitation acts.

Attaching the civil rights proposal to an education bill, although education was a major concern, may not have produced the comprehensive coverage that was being proposed. Furthermore, Congress and the courts had just begun to deal with the complex and controversial issues of mandating a public education for all disabled children. With attention on the graded schools, postsecondary education was not yet a key issue.

**Enactment of Public Law 93-112**

The court in *Mills v. Board of Education* (1972) declared that all disabled children have a constitutional
right to a free and appropriate public education. This
decision helped to legitimize the rationale for a federal
civil rights enactment. The ruling was followed by a widely
publicized demonstration of people in wheelchairs at the
Lincoln Memorial who said that the time had come for Con­
gress to take action (Kleinfield, 1977).

Congress responded by passing the Rehabilitation Act of
1973 (P.L. 93-112). Essentially, the bill was a combination
of the Vanik and Humphrey proposals.

Section 504 of P.L. 93-112 prohibits discrimination on
the basis of handicap by federally assisted programs.
Thus, section 504 extended and affirmed the statutory prohi­
bitions of the Civil Rights Act of 1964 to include
protections for persons with disabilities (Pullen & Zirkel,
1988; Yanok, 1987).

Rehabilitation Act of 1973

The Rehabilitation Act of 1973 authorizes grants to
states for vocational rehabilitation services, provides
funds to expand and improve research and training programs,
and coordinates all DHEW programs with respect to disabled
persons. Separate titles address employment, physical bar­
rriers, and the prohibition of discrimination on the basis of
handicap. The following discussion is limited to those reg­
ulations which are most applicable to higher education.

Purpose, Definitions and Functions

The Rehabilitation Act of 1973 was "initially construed
as dealing with employment and programs that would enhance employability" (Kortering, et al., 1990, p. 8). Over one billion dollars was authorized for vocational training and job placement (Phillips, 1986). The preamble to Title I:

The purpose of this title is to authorize grants to assist states to meet the current and future needs of handicapped individuals, so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.4

Under the Act, "handicapped individual" means any person who (a) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment, and (b) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services.5

Rehabilitation services to render a disabled person employable may include: an evaluation of rehabilitation potential; counseling, guidance, referral, and placement; vocational and other training services; physical and mental restoration; maintenance; interpreters for the deaf and readers for the blind; recruitment and training into specific service fields; occupational licenses, equipment, tools, and supplies; transportation; and telecommunications, sensory, and other technological aids and devices.6

The job training provisions are therefore applicable to postsecondary education. Depending on their individual needs, disabled students could receive financial assistance
from the rehabilitation agency to help offset the costs of tuition, textbooks, supplies, required tools and equipment, and licensing fees. Students could also be provided with instructional aids and services.

During the congressional hearings, testimony revealed that existing vocational rehabilitation programs were not reaching the severely disabled. As a result, Congress made certain that the intent of P.L. 93-112 was not only to serve an increasing number of individuals, but also place a greater emphasis on rehabilitating those with more severe handicaps.

In addition to providing rehabilitation services, Congress included three sections under Title V that constitute civil rights legislation (Mayer, 1982). Addressing accessibility, section 502 established the Architectural and Transportation Compliance Board to govern and ensure compliance with the Architectural Barriers Act of 1968 (P.L. 90-480). The Board is authorized to conduct investigations, hold public hearings, and issue orders.

Section 503 requires affirmative action by federal (sub)contractors with one or more (sub)contracts of $2,500 or more to employ and advance in employment qualified handicapped persons. The Labor Department administers this section, investigates complaints, and is charged with taking appropriate action in accordance with applicable laws and regulations.
Section 504 guarantees persons with disabilities "the right of equal access to any program receiving federal funding" (Dalke, 1991, p. 2). The statute reads:

No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, 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.13

The wording of section 504 is nearly identical to the antidiscrimination language used in the Civil Rights Act of 1964 and the 1972 Education Amendments. Rosenbaum and Milstein (1987, p. 89) observed:

This explicit extension of civil rights protection afforded to other minorities and women reversed a long history of laws and policies that viewed people with disabilities as economically non-productive who required segregation and charity.

As with Title VI of the Civil Rights Act, Congress used the threat of the removal of federal funds to mandate equality of opportunity and to prevent institutions from discriminating. Title VI, according to Senator Humphrey:

...is not a regulatory measure, but an exercise of the unquestioned power of the Federal Government to fix the terms on which Federal funds shall be disbursed...No one is required to accept federal aid. If he does so voluntarily, he must take it on the conditions on which it was offered.14

The power of Congress and the federal government to impose conditions on institutions receiving federal funds
"stems from and is theoretically limited by the spending power of the U.S. Constitution" (Abrams & Abrams, 1981, p. 1483). Under Article I, section 8, clause 1, Congress has the power to "pay the debts and provide for the common defense and general welfare of the United States."¹⁵

Through the voluntary acceptance of federal funds, recipients are obligated to comply with section 504. This obligation, framed in distinctive equality-based terms, demonstrates that Congress desired a "more substantial and expansive level of protection" for the disabled "than would be provided...under the equal protection clause" of the Fourteenth Amendment (Welch-Wegner, 1988, pp. 398-400).

A major problem, however, was that section 504 did not address enforcement. An effective mechanism to ensure compliance was lacking. Also, according to Abrams and Abrams (1981, p. 1483), the statute was vague:

Despite the clear anti-discrimination language of section 504, it is not self-executing. Deciding who must not discriminate, determining what handicaps qualify, defining discrimination and enforcing the available remedies for violation are not addressed by the statute. ...[T]hese issues are (typically) addressed by the federal administrative agency given jurisdiction over the programs. The Department of Health, Education and Welfare failed to act.

1974 Amendments: Public Law 93-516

Within the first year of implementation, persons with disabilities pressed Congress to broaden the coverage of
sections 503 and 504 of the 1973 Rehabilitation Act beyond employment, and to establish effective enforcement procedures. Responding to that pressure, and through the leadership of Senator Stafford, Congress in 1974 passed Public Law 93-516.

For a number of months after Congress passed the 1973 Rehabilitation Act, "bureaucrats struggled to make clear the complex rules of compliance" (Kleinfield, 1977, p. 88). In the meantime, because section 504 was included in a rehabilitation law, public school systems interpreted the statute as applying only to employment and continued to exclude the disabled from educational programs (Salamone, 1986).

Through nation-wide protests, persons with disabilities pressed Congress to clarify the coverage of section 504 and develop an effective enforcement mechanism (Kleinfield, 1977). In response, Congressional hearings were conducted in 1974 to amend the Rehabilitation Act of 1973.

Senator Stafford emphasized that Congress, in adopting section 504, did not intend to limit the statute's coverage to employment or vocational rehabilitation services. Concerning the need for enforcement measures, Stafford noted:

> It was the [Senate] Committee's intent that the enforcement under sections 503 and 504 would be similar to that carried out under section 601 of the Civil Rights Act and 901 of the Education Amendments of 1972 (Congressional Record, 120, 1974, p. 30,551).

In 1974, Congress amended the Rehabilitation Act of
1973 with Public Law 93-516. The amendment extended section 504 to cover a greater array of services for persons with disabilities and also "made equal rights for the handicapped part of the broader public policy on civil rights" (Meyen & Skrtic, 1988, p. 22).

In the amendment, the term *handicapped individual* was defined to:

> ...mean any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment.  

Thus, a "handicapped individual" was defined regardless of their employability (Rosenbaum & Milstein, 1987). This provision was "specifically designed to remedy discrimination in the areas of education, facility access, and employment" (Welch-Wegner, 1988, p. 396).

Concerning enforcement procedures, section 503 already specified that employers would lose their federal contracts for noncompliance. Congress remedied architectural inaccessibility with an amendment to section 502(d) to withhold or suspend federal funds with respect to any building found not to be in compliance with the prescribed standards.  

The amendment was not clear as to whether all federal funds may be withheld or just those related to the building. However, this enforcement mechanism was an extension of the procedure used in Title VI and Title IX, and it would later
be applied to the section 504 regulations.

**Other Significant Events: 1973-1975**

Several events occurred from 1973 to 1975 that are significant to the development of the section 504 regulations. The federal courts ruled that the constitutional and civil rights of college students are to be enforced. The Title IX regulations, issued by DHEW in 1975, include procedures that serve as a model for the section 504 regulations. With the enactment of the Education for All Handicapped Children’s Act by Congress in 1975, disability groups could focus their attention on getting the section 504 regulations issued.

**Higher Education and Federal Regulation**

After section 504 became law, business continued as usual for most colleges. Absent regulatory guidelines and enforcement procedures, the statute could not be implemented. Without knowing exactly what they were required to do to ensure compliance, colleges and universities did not make section 504 a priority.

Furthermore, most postsecondary institutions had few, if any, students with disabilities on campus (Mahan, 1974). Advocates for the disabled continued to focus their efforts on establishing educational services at the lower grades. Without an adequate preparatory education, the demand for a college education by persons with disabilities remained low. Postsecondary institutions, therefore, were not being pressured by the disabled, their advocates, or the federal
government to become accessible and accommodating.

The academic community was more concerned about its changing relationship with the federal government. Major issues included the use of federal funds to enforce the civil rights laws, the mounting costs of compliance, and the government's failure to consider the needs of postsecondary institutions when generating policy. When the section 504 regulations were being developed a few years later, DHEW demonstrated a willingness to consider these concerns.

Title VI of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments were particularly bothersome to the academic community since both required affirmative action in employment and student admissions, and noncompliance could result in the withdrawal of federal funds or even a civil lawsuit (Finn, 1978). Objections were raised that institutions had been forced to change their policies, and as a result, federal intervention seriously threatened institutional sovereignty and academic freedom (Kerr, 1982).

In his 1974-75 report to the Board of Overseers, President Derek Bok of Harvard University argued:

The government has begun to exert its influence in new ways to encourage colleges and universities to conform to a variety of public policies...Rules have been issued to regulate the internal operations of educational institutions by requiring them to grant equal admissions to women and minority groups, to institute grievance procedures in cases of alleged discrimination, and to open
confidential files for student inspection...(Edwards & Davis-Nordin, 1979, p. 466).

Academic officials also criticized the federal government for not considering the needs of colleges when developing social policies. Since the government seldom furnished the funds to satisfy its regulations, institutional resources had to be diverted from educational activities, and/or costs were passed onto consumers (Finn, 1978; Van Alstyne & Coldren, 1976). Although a federal agency may be involved with only part of a university, its actions thus affect the entire institution.

Higher education must also contend with multiple agencies since it is not a regulated entity (Van Alstyne & Coldren, 1976). Postsecondary institutions therefore often find themselves "trapped in a mass of paperwork, bureaucratic guidelines, and conflicting definitions" (Weinberger, 1979, pp. 65-6).

Institutional needs have not been considered because federal policies originate outside education. In the Senate and the House, many programs "of great importance to higher education are the responsibility not of the committees with primary jurisdiction over education policy, but of units that may have little interest...and that are driven primarily by missions and constituencies quite different from higher education" (Finn, 1978, p. 185). As a result, federal officials dealing with higher education often lack
reliable information upon which to base their decisions.

Although the academic community's concerns may have merit, the public demanded that the federal government take action to end discrimination on the basis of race, gender and handicap in all aspects of American life. Higher education had a history of discriminatory policies and practices. Because of the constitutional restrictions imposed on the role of the federal government vis-a-vis education, the most effective avenue for Congress was to couple social regulation with federal funding.

By voluntarily requesting federal funds, colleges obligated themselves to regulatory compliance. Also, the federal courts upheld the legal obligation of public institutions to know and respect the civil and constitutional rights of students (Wood v. Strickland, 1975), and ordered DHEW to enforce civil rights legislation (Adams v. Richardson, 1973).

Right to Education Movement

During the mid-1970s, Congress expanded the legal protection of disabled persons with several enactments. The rights gained inspired advocates to demand that the section 504 regulations be developed.

A total of 61 federal laws specific to the disabled were passed between 1970 and 1975 (La Vor, 1976). Many of these laws directly or indirectly affected the public schools as the federal government continued to advance its
role in the education of disabled children (Burgdorf, 1975).

The Developmentally Disabled Assistance and Bill of Rights Act of 1974 (P.L. 94-103) requires participating states to protect and advocate for the rights of individuals with disabilities against discrimination, abuse, and neglect (Mopsik & Agard, 1985). Section 801 of the 1974 Education Amendments (P.L. 93-380) established the goal of providing full educational opportunity for disabled children and funding procedures to accomplish that goal.\(^\text{18}\)

Despite this laudible goal, Congress reported in 1975 that 1.75 million disabled children did not attend school, and another 2.5 million received an inadequate education.\(^\text{19}\) In response to extreme pressure from advocacy groups, Congress passed the Education for All Handicapped Children Act of 1975 (P.L. 94-142). The EAHCA ordered that a free, appropriate public education be available to all such children between the ages of 3 and 21.\(^\text{20}\)

Special education dramatically changed under the EAHCA. An increased number of children with disabilities were identified and served. The emphasis on regular classroom placement, along with the provision of comprehensive services and advanced instructional technologies, resulted in more students with disabilities being adequately prepared for a postsecondary education.

Having finally won this landmark legislation, disability groups turned their full attention to section 504. The
demand was aimed at ensuring nondiscrimination in all other aspects of American life, including postsecondary education.

**Title IX Regulations**

A direct influence on the development of the section 504 regulations were the implementing regulations to Title IX. In fact, the language, required compliance activities, and enforcement procedures of the section 504 regulations are nearly identical to those issued in 1975 by DHEW to implement Title IX.

The Title IX regulations mandate equal treatment in such educational programs and activities as admission and recruitment, financial aid, testing, counseling, insurance, housing, athletics, and employment. Recipients must sign an assurance of institution-wide compliance, conduct a self-evaluation of current policies and practices, designate a compliance coordinator, and publish notice that it does not discriminate on the basis of sex.21

Title IX incorporates by reference the Title VI (1964 Civil Rights Act) enforcement provisions.22 OCR determines Title IX violations through periodic compliance reviews and the investigation of individual and class complaints.23

The regulations generated considerable controversy. Two major issues that were raised: (1) whether federal financial assistance includes both direct and indirect aid, and (2) the view of DHEW that the entire institution was considered a "program or activity." Since the section 504...
regulations were so closely patterned after those of Title IX, determining section 504's coverage would likewise be a problematic issue.

Section 504 Regulations

With pressure from the courts and advocacy groups, DHEW in 1977 issued regulations to implement section 504. Specific coverage includes: employment; preschool, elementary, secondary, and postsecondary education; and health, welfare, and social services. The following discussion is limited to those regulations relevant to postsecondary education.

Development of the Implementing Regulations

A 1976 national survey found that of the 12 million students enrolled in higher education, only 689,000 reported having a disability (Bureau of the Census, 1978). That estimate, although the first attempt to identify the number of all disabled college students, was considered by the disabled and their advocates to demonstrate the tremendous disparity between the disabled and the nondisabled in accessing postsecondary education (Kelly, 1984).

The survey documented that about one-fifth of all four-year institutions in the United States offered any special services, and many disabled students often faced: nonessential academic requirements (e.g., physical education credits regardless of one's program emphasis and ability to participate); the absence of auxiliary aids; lack of accessible housing or bathroom facilities; exclusion from athletics or
extracurricular activities; and denial of health care or student insurance programs (Bureau of the Census, 1978).

Bailey (1979) adds that some colleges that admitted students with disabilities overreacted to section 504 by mandating certain admissions procedures or criteria not required of other applicants. Also, many students were instructed that they had to use special services whether or not they felt the need for them.

As late as 1976, three years after section 504 was enacted by Congress, DHEW had failed to issue the implementing rules and regulations. Without these, colleges did not know their legal obligations under section 504, and lacked direction on how to implement the statute. DHEW Secretary Mathews was adhering to a Nixon/Ford policy that de-emphasized the federal role in administering and enforcing the civil rights laws (Welch-Wegner, 1988).

This is not to say, however, that Secretary Mathews and DHEW did nothing. The agency held ten meetings across the nation to actively seek public input in order to make more representative decisions (Edwards & Davis-Nordin, 1979).

Despite a court order (Cherry v. Mathews, 1976) and an Executive Order24 directing DHEW to promulgate the section 504 regulations, Mathews with only a few days left in office refused to do so. When Joseph Califano replaced Mathews in January of 1977, he pushed DHEW to review the draft regulations (Salamone, 1986).
The review process included hearings and testimony by disabled persons and representatives from the higher education associations. Although the Carter appointees supported the basic regulations, they recognized that a number of controversial issues had to be resolved.

The academic community expressed several concerns in response to two preliminary drafts (Bailey, 1979). The institutional costs of compliance, especially the expense of modifying physical structures, was a primary issue. In addition, college administrators felt they should not be financially responsible for providing such auxiliary aids as tape recorders.

College officials were also concerned that the definition of "handicapped person" under the proposed regulations was too broad (Bailey, 1979). Fearing that many students with minor problems may claim to be disabled and thus have a tremendous impact on institutional resources, the academic community was not willing to recognize conditions outside of such traditional handicaps as those associated with blindness, physical impairments, and deafness.

Another concern of the academic community was that the proposed regulations required institutions to assure nondiscrimination by third parties that offer such student services as health insurance and off-campus housing (Bailey, 1979). College officials said that having health insurance carriers provide the same coverage for disabled students as
for the nondisabled may be impossible due to the nature of that particular business.

As the discussions continued, disability groups worried about the possibility of any erosion in their position, and "operating in the background was the usual tendency of advocacy groups to put additional pressure on a 'friendly' administration" (Salamone, 1986, p. 142). Persons with disabilities demonstrated coast to coast, staging sit-ins at DHEW and its regional offices, and even at Califano's home.

In response, Secretary Califano signed the final regulations on April 28, 1977 (Kleinfield, 1977). Among the reasons cited by Califano for the delay: insufficient congressional guidance regarding the issues raised by section 504, getting the Carter Administration in place, and the need to ensure that the regulations addressed the legitimate needs of the disabled (Edwards & Davis-Nordin, 1979).

The final regulations reflected a compromise between the concerns of the academic community and the demands of the disabled. The basic philosophy that emerged was two-fold: (1) elimination of barriers on the basis of flexible criterion (program accessibility) rather than carte blanche removal of all physical barriers; and (2) treatment of, and services for, disabled persons on a case-by-case basis (Bailey, 1979).

Implementing Regulations to Section 504

The section 504 regulations were issued by DHEW on June
They are divided into seven parts: (1) general provisions; (2) employment; (3) program accessibility; (4) preschool, elementary, secondary education; (5) postsecondary education; (6) health, welfare, and social services; and (7) procedures.

Only those regulations directly related to postsecondary education are summarized below. A more complete description is provided in the Appendix.

General Provisions and Important Definitions. Under subpart A, section 504 applies to all recipients of federal assistance, regardless of the amount received. Recipients may not discriminate against qualified handicapped persons on the basis of handicap, or prevent them from participating in and benefiting from the recipient’s programs and activities.

Also, persons with disabilities are to be provided aids, benefits or services that afford opportunities equal to those provided the nondisabled. Although separate programs and activities are therefore allowed to obtain equality of opportunity, qualified handicapped persons may not be prevented from participating in regular programs or activities if they so desire.

The term "handicapped person" means anyone whose physical or mental impairment substantially limits one or more major life activities (e.g., learning). The person may have a record of such impairment, or simply be regarded as
having such impairment. Thus, section 504 attempts to pro-
tect individuals from the adverse effects of handicaps which
are actual or perceived, past or present, physical or mental
(Edwards & Davis-Nordin, 1979, p. 740).

With respect to postsecondary education, the term
"qualified handicapped person" means anyone who meets the
academic and technical standards requisite to admission or
participation in the recipient's education program or activ-
ity.31 In this context, the term "technical standards"
refers to nonacademic admissions criteria that are essential
to participation in the program in question.32

Required compliance activities are similar to those of
the Title IX regulations. Applicants for federal financial
assistance are to submit a written assurance of compliance
with section 504.33 The recipient is to conduct a self-
evaluation,34 designate at least one person to coordinate
its compliance efforts,35 adopt grievance procedures that
incorporate due process standards and provide for prompt and
equitable resolution of complaints,36 and give notice that
it does not discriminate on the basis of handicap.37

Enforcement Procedures. Subpart G addresses compliance
and enforcement. Until DHEW issues a consolidated procedure
for all the civil rights articles it administers, the pro-
cedural provisions applicable to Title VI of the 1964 Civil
Rights Act are incorporated by reference.38

The compliance procedure involves complaints and

Under the enforcement procedures for section 504, individuals may file a complaint of discrimination with the Office for Civil Rights, Department HEW, which will investigate the complaint. If necessary, a formal hearing may ensue, and the Office for Civil Rights could ultimately petition that all Federal monies to the institution be stopped.

Alternatively, an individual can file a private action suit in federal court (Pullin & Zirkel, 1988). Although section 504 encourages the development of grievance procedures, it also provides "the option of suing without first exhausting administrative remedies" (Sedita, 1980, p. 8).

Program Accessibility. Under subpart C, the recipient's facilities must be accessible to and usable by qualified handicapped persons; thus ensuring that these individuals are not denied participation on the basis of handicap. This requirement applies to existing facilities, new construction, and facilities that are leased for any programs, activities, or services.

The regulations emphasize program accessibility. Structural modifications are not required so long as the program "as a whole" is accessible. A recipient may comply through: the redesign of equipment; reassignment of classes or other services to accessible buildings; assignment of aides; home visits; or any other such methods. The recipient is to give priority to those methods that
offer programs and activities to disabled persons in the "most integrated setting appropriate."42

Also, if it is impractical or prohibitively expensive to renovate a particular facility to achieve complete access, then that facility is to be altered to the "maximum extent feasible."43 Where structural changes are necessary, the recipient is to develop a transition plan and make such changes by June 3, 1980.44

After June 3, 1977, new facilities, or part of a facility, are to be designed and constructed so that they are readily accessible to and usable by handicapped persons.45 The design, construction, or alteration of facilities are to be in conformance with ANSI standards.46 Departure from these requirements is permitted when it is clearly evident that equivalent access to the facility or part of the facility is provided.

Postsecondary Education. Subpart E applies to postsecondary education programs and activities that receive or benefit from federal financial assistance.47 The regulations address admissions and recruitment, general treatment of students, academic adjustments, and student services.

1. Admissions. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient.48 Specifically, the recipient may not apply limits upon the number or proportion of handicapped persons,
use any criterion, test or testing procedure that discriminates on the basis of handicap, nor make preadmission inquiry as to whether an applicant is handicapped.49

The prohibition against preadmission inquiry applies equally to interviews, letters of recommendation and other activities related to the admissions process (Biehl, 1978). To correct deficiencies, however, the recipient may invite applicants to indicate whether and to what extent they are handicapped.50 The recipient must state the intended use of this information, that it will be kept confidential, and refusal to provide it will not subject the applicant to any adverse treatment.51

DeGraff (1979, p. 44) made the following observation concerning nondiscrimination in admissions:

Section 504...does not intend that colleges or universities should lower their admissions standards for handicapped students, and it does not require "affirmative action" in admissions. Instead, in effect, it says, "Don't discriminate. Don't subject the handicapped to any more stringent a set of admissions criteria than you would anyone else."

2. Treatment. For those students who are admitted, subpart E prohibits discrimination on the basis of handicap in any of the recipient's academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletic, recreational, transportation, extracurricular, or other programs and activities.52
Included are any such programs or activities offered to the nondisabled not wholly operated by the recipient.\textsuperscript{53}

3. Academic adjustments. Concerning academic programs and activities, subpart E requires recipients to make adjustments to ensure against the discrimination of qualified handicapped persons on the basis of their handicap. Specifically, the regulations address academic requirements, academic rules, course examinations, and the provision of auxiliary aids.

The student is responsible, however, for making his or her disability known and for requesting special services (OCR, 1989). The college may ask students to volunteer this information after admission, and to provide documentation of their handicap and the need for requested services.

Academic requirements that discriminate on the basis of handicap against a qualified student may need to be modified.\textsuperscript{54} Modifications can include: changes in the length of time permitted for the completion of degree requirements, substitution of certain required courses, and adaptation of the manner in which specific courses are conducted.\textsuperscript{55}

Those academic requirements that can be demonstrated as essential to the program of instruction or to any directly related licensing requirement will not be regarded as discriminatory. If the requirement is shown to be essential and the disabled person cannot fulfill it, then that individual is not a "qualified handicapped person" within the
definition of this term (Biehl, 1978). The quality of education offered is not to be diluted (Yanok, 1987).

Also, the recipient may not impose upon disabled 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 these students in educational programs or activities.\(^5\)\(^6\)

In its course examinations or other procedures for evaluating the academic achievement of students, the recipient is to ensure that the results represent achievement rather than the student's disability.\(^5\)\(^7\) Alternative procedures may include: extended or untimed tests; oral questions or Braille print for the visually impaired; typed instructions for the hearing impaired; accessible location for the mobility impaired; and having learning disabled students clarify and rephrase questions (Biehl, 1978; Yanok, 1987).

Recipients are also responsible for providing those auxiliary aids that ensure access to educational facilities and all academically required activities.\(^5\)\(^8\) According to the Federal Register (1977, p. 22,676), equal educational opportunity is not provided "to a deaf child by admitting him or her to a classroom but providing no means for the child to understand the teacher or receive instruction."

Auxiliary aids may include: taped texts, interpreters for the hearing impaired, readers for those with visual impairments, classroom equipment adapted for use by students
with manual impairments, and other similar services and actions. Sedita (1980) adds that tape recorders and notetakers may also qualify as auxiliary aids.

Recipients are not required to meet a student’s personal preference so long as the aid is effective in enabling the individual to achieve full participation (Biehl, 1978). Also, colleges need not provide devices or services for the student’s personal use or medical care (DeGraff, 1979).

4. Student services. Subpart E mandates that qualified handicapped students be granted an equal opportunity to participate in and benefit from those services that are provided to nondisabled students. Such services include student housing, financial aid, employment assistance, physical education and athletics, counseling, social organizations, transportation, and health insurance.

To ensure that student services do not discriminate on the basis of handicap, they must be accessible and provided at the same cost as for the nondisabled (Hanson, 1979). Alternative services may be made available to ensure equality of opportunity so long as the services are comparable to those provided the nondisabled and are offered in the most integrated setting appropriate (Biehl, 1978). These requirements also apply to outside providers that serve the recipient institutions (e.g., health insurance companies).

Potential to Impact Postsecondary Education

Clearly written policies that are not difficult to
implement or enforce are more likely to be well-received and have a greater impact than vague policies that require the extremely difficult (Meyen, 1978). The weaknesses of a policy are certain to cause problems with its implementation.

To determine the quality of a law, Lon Fuller (1969) developed a set of criteria that may be applied to the procedural characteristics embodied in that statute (Klein, 1984). The section 504 regulations are analyzed below according to the requirements of these criteria. This information identifies the strengths and limitations of the written document, and is used in the next chapter to help explain any problems, successes or unplanned consequences in the implementation of section 504(E).

Section 504(E) Strengths

In relation to Lon Fuller's criteria of internal morality, section 504(E) and its implementing regulations: (1) contain general rules, (2) were made known, (3) are not retroactive, (4) are not contradictory, and (5) have a degree of consistency.

These strengths suggest that colleges and universities will not be caught off-guard as the section 504 regulations take effect, a reflection of the early involvement of the academic community in developing the regulations. Also, the administration of section 504(E) by DHEW will be similar to that of the other civil rights statutes.

The general rules of section 504(E) are straight
forward. Recipients of federal funding may not discriminate on the basis of handicap. Opportunities for full participation must be made available and program barriers are to be eliminated.

Colleges had sufficient opportunities to become aware of, and prepare for, the section 504(E) regulations. Following the enactment of section 504 in 1973, the regulations took approximately four years to be issued. Preliminary drafts were presented to the academic community, and reactions solicited. DHEW published the final regulations, and technical assistance was made available through OCR and the higher education associations (Bailey, 1979).

Section 504(E) is not retroactive, meaning that recipient institutions will not be penalized for past action or inaction. The implementing regulations apply only to present and future action. However, recipients may voluntarily remedy the effects of previous discrimination.

Furthermore, section 504(E)'s implementing regulations do not contradict either the Rehabilitation Act of 1973 nor any other federal law. Also, contradictions have not been identified among or within the regulations.

Another benefit to recipient institutions, and to DHEW in administering section 504(E), is that the statute is consistent with previous federal enactments. The implementing regulations are similar to those of Title IX (1972 Education Amendments) and Title VI (1964 Civil Rights Act). In fact,
the wording of all three federal laws is nearly identical.

**Section 504(E) Limitations**

In relation to Lon Fuller's criteria of internal morality, section 504(E) and its implementing regulations also have certain limitations since they: (1) are not reasonably clear, (2) in certain instances require the extremely difficult, and (3) present potential conflict in their administration.

These limitations suggest that institutions could have difficulty implementing section 504(E). Vague wording not only leaves college officials without direction, but also increases the potential for conflict between colleges and disabled students as each party is likely to interpret the regulations in favor of their own interests. In addition, regulations that impose hardships on institutions will be resisted and, as a result, compliance may not be achieved.

Certain provisions of section 504(E) are not clear. Concerns were raised by the academic community that the definition of "handicapped person" was too broad since it includes those who are adversely affected by handicaps that are actual or perceived, past or present, physical or mental (McLoughlin, 1982). Also, college officials did not know how to determine if handicapped persons are "otherwise qualified" for admission since the regulations failed to define requisite "academic and technical standards" (Biehl, 1978).

Furthermore, guidance was needed on how to measure the
"adverse effect" of an admissions test on a candidate's disability (Biehl, 1978). Another problem was that the regulations did not identify who is responsible for providing auxiliary aids to ensure full participation in cultural and recreational activities that, although an integral part of the institution's overall program, are not academically required (Bailey, 1979).

A number of concepts related to "program accessibility" were in need of interpretation. The regulations did not clarify what constitutes a "program or activity," nor what is meant by operating the program and activity so that it is readily accessible "when viewed in its entirety" (Bailey, 1979; Biehl, 1978). Concerning structural modifications, the terms "to the maximum extent appropriate" and "most integrated setting appropriate" are vague (Guthrie, 1979).

Representatives of the academic community were concerned that some of the requirements of section 504(E) would be difficult to implement. Institutional expense was a major issue, especially the costs of auxiliary aids and structural modifications (Bailey, 1979).

College officials were also concerned about: the tight compliance deadlines (60 days for program access, three years to complete facility modifications); having to ensure that such services as off-campus student housing and health insurance programs are nondiscriminatory; and the problems imposed by the prohibition of preadmission inquiry (not
knowing what auxiliary aids are needed until after the students enter and demand them) (Bailey, 1979).

Furthermore, ANSI standards for physical accessibility were still being revised at the time of regulatory implementation (Hanson, 1979). Colleges were also subject to state and local codes that sometimes conflicted with the section 504 requirements (Anderson & Coons, 1979).

Another problem was that section 504 was not clear about its application and administration. The implementing regulations do not fully prescribe enforcement procedures other than to refer to Title VI of the 1964 Civil Rights Act (Bailey, 1979). A significant issue to be addressed is whether section 504 applies to only those individual programs and activities that benefit directly from federal financial assistance, or to the entire institution (Griffin, 1982).

Individuals and organizations may need to turn to the courts for a definitive word on some of the more difficult issues raised by the regulations. Likewise, Congress may be pressed to clarify and/or strengthen specific regulations through an amendment.

**Summary Remarks to Section 504 Development**

Concerned about their exclusion from public education and employment, disability groups in the early 1970s pressed Congress for a federal civil rights law. The period favored their demands as legislation protecting the civil rights of racial minorities and women had been passed, and the courts
ruled that a free and appropriate public education is a constitutional right of all disabled children.

Bills proposed by Senators Humphrey and Percy and Representative Vanik emphasized equal education opportunities through nondiscrimination in employment. This strategy avoided the controversy of Title IX, and promoted the public benefit by making disabled persons less dependent on society. Also, job training legislation had been in place for years with the vocational rehabilitation acts.

Congress passed the Rehabilitation Act of 1973 to provide the disabled with job training and placement services. Although postsecondary education is not mentioned, the Act offers financial assistance, aids and equipment to students for their job training. Section 504, patterned after Title VI of the 1964 Civil Rights Act, prohibits discrimination on the basis of handicap by recipients of federal funds.

In response to pressure from the disabled, Congress amended section 504 in 1974 (P.L. 93-516) to expand coverage beyond employment, and authorize federal fund withdrawal as a sanction against architectural inaccessibility. However, under the Nixon/Ford policy of minimizing federal agency administration of the civil rights laws, DHEW failed to develop section 504’s implementing regulations. Without these, section 504 had little force.

Postsecondary institutions did not know the extent of their legal obligation to section 504. With no guidance and
few, if any, disabled students on campus, colleges and universities did not have to be concerned about making section 504 a priority.

Also, advocates for the disabled were more concerned about establishing educational services in the graded schools. In response to extreme pressure from that group, Congress passed Public Law 94-142. The law requires public schools to provide a free and appropriate education for all disabled children, with an emphasis on regular classroom placement. As a result, more disabled students would be adequately prepared for college.

The Carter Administration, under pressure from disability groups, developed preliminary drafts of the section 504 regulations and invited persons with disabilities and representatives of the higher education associations to respond. After a nation-wide protest by the disabled over additional delays, the regulations were issued by DHEW in 1977.

The final regulations, although very similar to the Title IX regulations, represent a compromise between the concerns of the academic community and the demands of the disabled. The regulations call for flexibility in eliminating barriers, and emphasize that services be provided on an individual, rather than a group, basis.

Under subpart E, postsecondary institutions in receipt of federal funds may not discriminate on the basis of handicap in recruitment, admission, and treatment after
admission. Noncompliance could result in the loss of federal funds. In addition, individuals may file a private suit in federal court.

Certain portions of section 504(E) are in need of official interpretation. Individuals and organizations may have to turn to the courts for a definitive word on some of the more difficult issues raised by the regulations.
Notes to Section 504 Development


2Although the Vanik bill did not leave committee, its sponsor noted that its language and intent had been incorporated into sections 503 and 504 of the 1973 Rehabilitation Act. See 119 Congressional Record, p. 7114 (1973).

3118 Congressional Record, pp. 32, 310 (1972). See also 119 Congressional Record, p. 6145 (1973).

4Title I, sec. 100(a), 87 Stat. 363 (1973) [codified at 29 U.S.C. sec. 720(a) (1976)].

529 U.S.C. sec. 7(6). The term "severe handicap" means a disability which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure, respiratory or pulmonary dysfunction, and any other disability specified by the Secretary of DHEW in prescribed regulations [sec. 7(12)].

6Ibid., at sec. 103(a).


8Ibid., p. 2092. Note also that funds were made available to provide independent living services for severely disabled persons.

9sec. 502(a). Representative departments and agencies include DHEW, Transportation, Housing and Urban Development, Labor, the Interior, General Services Administration, U.S. Postal Service, and the Veteran’s Administration.

10Ibid., at (d). Note also that the Board is authorized to appoint a hearing examiner [sec. 502(e)].

11sec. 503(a). In addition, the President is to implement the provisions of this section by promulgating regulations within 90 days after the date of enactment.

12Ibid., at (b).

13sec. 504.

14110 Congressional Record, p. 6546 (1964).

15Ibid. (U.S. Const., Art. I, sec. 8, cl. 1). Note also that the court in United States v. Butler allowed
Congress to expend funds for purposes not expressly granted by another provision of the Constitution [297 U.S. 1 (1936)].


17 Title I, sec. 111(o)(2).

18 Title VI, Part B, sec. 613(12)(a). In addition, procedural safeguards were set forth to insure that disabled children and their parents or guardians are protected in decisions regarding identification, evaluation, and educational placement [Ibid., at (13)]. This section also requires that handicapped children be educated with their nondisabled peers to the maximum extent appropriate [Ibid., at (a)(i-iv)].


21 34 C.F.R. sec. 106.3(c), 106.4 (1984).

22 Ibid., at sec. 100.6(b)(c).

23 Ibid., at sec. 100.7(a)(b).

24 Executive Order No. 11,914, 41 Federal Register 17,871 (1976).


26 Subpart A, 84.1(a).

27 sec. 84.4(a).

28 Ibid., at (b)(2).

29 Ibid., at (3).

30 sec. 84.3(j)(1), (2)(ii)(iv).

31 Ibid., at (3).

32 See Regulations Analysis, p. 22,687.

33 sec. 84.5(a).

34 Ibid., at (c)(1). A recipient that employs fifteen or more persons shall, for at least three years following completion of the self-evaluation, maintain a file, make available for public inspection, and provide to the DHEW Director upon request: (a) a list of interested persons consulted, (b) a description of areas examined and any problems identified, and (c) a description of any modifications made and of any remedial steps taken [sec. 84.6(a)(2)].

35 sec. 84.7(a).
36 Ibid., at (b).
37 sec. 84.8(a). Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in the recipient’s publication, and distribution of memoranda or other written communications. To meet this requirement concerning its own publications, a recipient may either include appropriate inserts in existing materials and publications or revise and reprint the materials and publications.
38 Subpart G, sec. 86.71. See also 45 C.F.R. sec. 80-6-80-11, and 45 C.F.R. Part 81.
39 Subpart C, sec. 84.21.
40 sec. 84.22(a).
41 Ibid., at (b).
42 Ibid.
43 sec. 84.23(b).
44 sec. 84.22(d).
45 sec. 84.23(b).
46 Ibid., at (c). ANSI standards include precise specifications for: doors, stairways, parking, dormitories, elevators, walkways, corridors, ramps, sanitary facilities (including toilets, sinks, mirrors, and showers), dining areas, lecture halls and classrooms, laboratories, spectator spaces, physical education facilities, libraries, drinking fountains, light switches, telephones, electric outlets, vending machines, and so forth ("ANSI National Standards Specifications for Making Buildings and Facilities Accessible To, and Usable By, the Physically Handicapped" [ANSI A 117.1-1961 (R1971)].
47 Subpart E, sec. 84.41.
48 sec. 84.42(a).
49 Ibid., at (b)(1-4).
50 Ibid., at (c).
51 Ibid., at (c)(1) and (2).
52 sec. 84.43(a).
53 Ibid., at (b).
54 sec. 84.44(a).
55 Ibid.
56 Ibid., at (b).
57 Ibid., at (c).
58 Ibid., at (d)(1).
59 Ibid., at (2).
60 sec. 84.5(b).
61 sec. 84.46(a)(1).
62 Ibid., at (b).
63 sec. 84.47(a)(1).
64 Ibid., at (2).
65 Ibid., at (c).
66 sec. 84.43(a).
67 Ibid.
CHAPTER SIX: SECTION 504(E) IMPLEMENTATION

Overall, the academic community reacted positively to the purpose of section 504(E) in eliminating discrimination on the basis of handicap. Acceptance was due, in part, to the involvement of the higher education associations in the development and implementation of the section 504 regulations.

Concerns were raised, however, that section 504(E) was difficult to implement fully. Major issues included compliance costs, the statute's ambiguous language, whether section 504(E) applies to the entire institution or to only those programs receiving federal funds, the lack of implementation guidelines, a tight compliance schedule, and assurance that third parties (e.g., insurance providers) do not discriminate.

Since its implementation in 1977, section 504(E) has been shaped by federal agency rulings, subsequent legislation, and judicial interpretation. The Attorney General ruled that alcoholics and drug addicts qualify as being handicapped, DHEW added temporary disabling conditions, and the federal courts held that persons with AIDS and other contagious diseases also qualify.

In 1979, the Supreme Court defined an "otherwise qualified handicapped person" as one who is able to meet all of a
program's requirements in spite of the handicap. The Court, and lower courts, extended the concept of reasonable accommodation to education, and held that section 504 applies to only those specific programs in receipt of federal funds.

Congress amended section 504 in 1978 (P.L. 95-602) to specify enforcement procedures. In 1988, Congress enacted legislation (P.L. 100-259) to apply section 504 and the other civil rights laws to an entire institution if any of its programs or activities receive federal funds.

Due to a lack of available data, determining the overall effect of section 504(E) on postsecondary education is difficult. Most colleges and universities have made an attempt to comply with the implementing regulations in the areas of recruitment, admissions, physical access and accommodation. Full access and accommodation, however, have yet to be achieved nationally.

The following discussion investigates the implementation of section 504(E), from 1977 up to the passage of the 1990 Americans with Disabilities Act (P.L. 101-336). Information is divided into sections: Immediate Reaction, Administration, Enforcement, Admissions, Physical Accessibility, Academic Accommodations, and Non-Academic Student Services. Each section examines the scope of the relevant regulation(s), problematic issues, evolving federal jurisprudence, and the effect on postsecondary education, including institutional compliance.
Immediate Reaction To The Section 504 Regulations

An examination of the academic community's response to the section 504(E) regulations helps to determine the willingness of postsecondary institutions to comply. Issues of major concern to the academic community are also uncovered.

When the section 504(E) regulations were issued in 1977, colleges and universities for the first time in the history of American higher education became legally obligated to eliminate discrimination on the basis of handicap. Since the regulations apply to all programs and activities that receive or benefit from federal funds, most of the more than 3,000 postsecondary institutions are covered by section 504 (Mangrum & Strichart, 1988; Thomas & Thomas, 1991).

The potential impact on postsecondary education was great. Admissions, academic requirements, student services, physical structures, and institutional policies must not discriminate on the basis of handicap. In 1978, J.W. Peltason, President of the American Council on Education, said section 504 "brought into focus the social and as well as legal obligations of the postsecondary education community toward the handicapped" (Putnam, 1983, p. 73).

All concerned parties, including the federal government and advocates for the disabled, agreed that "by and large higher education reacted positively" to section 504 (Bailey, 1979, pp. 87-8). Postsecondary institutions made a sincere effort to understand and begin to comply with the statute
(Pinder, 1979). The fact that the higher education associations stepped forward to provide colleges with technical assistance helped to make the regulations less threatening (Bailey, 1979; Jastram, 1979).

The academic community, however, expressed concern about several problematic issues associated with the implementation of section 504. The regulations did not resolve questions related to affirmative action, appropriate modifications for accommodation, and the provision of personnel to perform essential tasks (Hendrickson, 1982).

Colleges criticized the regulations for being ambiguous and inflexible, and for putting the handicapped into an adversary position with their schools (Kleinfield, 1977). The greatest concern expressed about section 504 was the cost of compliance. Funding to implement the regulations had to come from already taxed institutional resources, and the ability of colleges to accommodate change and expand programs was limited (Walker & Pomeranz, 1979).

Efforts to resolve many of these concerns were undertaken by the courts, Congress, and the academic community itself. The results have been mixed. To gain a clearer picture of the overall effect of the regulations on postsecondary education, the study next examines the administration and enforcement of section 504(E).

**Administration of Section 504(E)**

To implement section 504(E), the regulations require
colleges to perform certain administrative functions. These activities have impacted institutional resources.

**Required Administrative Chores**

Administrative activities required to implement section 504, in addition to the institution's standard operating procedures, include: appointing an advisory committee and a section 504 compliance coordinator; submitting to DHEW a written assurance of compliance, a section 504 self-evaluation, and a Transition Plan for facility modifications; ensuring that new construction conforms to ANSI standards, and structural modifications are finished by June 3, 1980; adopting grievance procedures and publishing notice of non-discrimination; and making certain that auxiliary aids are available (Biehl, 1978).

**Impact on Institutional Resources**

The required administrative tasks affect an institution's employment needs, as well as its material and financial resources (Joyce, 1982). Personnel had to be hired, reassigned, and/or assume additional duties to handle the necessary paperwork, coordinate compliance efforts, oversee structural modifications, arrange for accommodation services and aids, provide campus-wide inservice and advisement, and establish and maintain a budget.

Material resources needed to administer the section 504 regulations are associated with publications (e.g., revised student handbooks and recruitment materials, statements of
nondiscrimination, brochures of available services), and office operations (Dalke, 1991). Also, some instructional materials may require modification depending on the nature of a student's disability (Mangrum & Strichart, 1985).

The financial ramifications of section 504 were "viewed by some colleges as the greatest obstacle to its implementa-
tion" (Dailey & Jeffress, 1981, p. 542). Cost was cited as the major reason why resource programs for disabled students were not readily available (Stalcup & Freeman, 1980).

Measures to ensure equal educational opportunities for the disabled are far more costly than those for nondisabled racial minorities and women. Depending on the nature and severity of the handicapping condition, persons with disab-
abilities require varying degrees of academic accommodation and physical accessibility (Cardoni, 1982).

After the section 504 regulations were issued, official-
cials from DHEW and the academic community estimated the cost of bringing all colleges and universities into compli-
ance would be anywhere from $1.5 billion to $2.4 billion annually (Kleinfield, 1977, p. 88; Millington, 1979, p. 382). Reliable estimates of costs to individual institutions, however, are not available (Welch-Wegner, 1983).

Most college campuses established a Disabled Student Services (DSS) program to assist in administering section 504(E) (Dalke, 1991). A national survey of 63 DSS programs reported that the mean annual budget was $115,000 (Sergent,
Large schools averaged $135,000 and small schools $98,000.

The major annual expenditure of a DSS office is the employment of a program director, a coordinator of support services (larger programs), and paid tutors and/or other support personnel (Dalke, 1991). Other program costs include printed materials, faculty and staff inservice, diagnostic testing, and the provision of academic support services and auxiliary aids (Mangrum & Strichart, 1985).

Structural modifications have presented a tremendous cost demand. Figures for modifying a campus range from $0.4 million to $2.2 million (Welch-Wegner, 1983). Even though the federal government authorized $25 million in grants to colleges for the removal of architectural barriers, the amount available to individual campuses was not enough to bring them into compliance (Dailey & Jeffress, 1981).

Furthermore, section 504 does not provide funding to implement any of its regulations. In most instances, expenditures must come out of already strained institutional budgets (Putnam, 1984). Utility costs, for instance, tripled between 1974 and 1984 (Daily Press, 1990; American Association of Governing Boards, 1985). Also, postsecondary institutions in 20 states had a total of more than $500 million in state funds cut from their budgets in 1987-88 (Jaschik, 1987).

Of the 63 DSS programs surveyed, about 60% used
institutional funds exclusively (Sergent, 1987, p. 7).

Other programs utilized private sources, state monies and/or federal project grants to remove physical barriers and provide disabled students with support services and auxiliary aids. The use of outside funding sources makes determining the actual impact of the section 504 regulations on institutional budgets a very difficult task.

Several private sources that have assisted and continue to fund colleges for the provision of services to disabled students are listed in the Foundation Grants Index (The Foundation Center) and the Annual Register of Grant Support (Reed Publishing). Also, many institutions have simply modified existing programs, charged service fees, or accessed nonresident tuition (HEATH, 1986; Dalke, 1991).


Technical Assistance

In addition to their concern about the impact of section 504(E) on institutional resources, many college officials complained about the lack of guidance on how to administer the regulations (Putnam, 1984; O'Brien & Ross,
1981). Technical assistance was, however, available to postsecondary institutions through several agencies and organizations. The degree to which college officials have used these services has yet to be determined.

By the fall of 1977, technical assistance projects were initiated by the American Council on Education under the acronym HEATH, Higher Education And The Handicapped (Bailey, 1979). The projects offered college and university personnel a hotline, workshops, guidebooks, consultant training, and assistance in identifying and resolving problems associated with disabled students on campus.

The subcontractors in the HEATH program provided a variety of services. The National Association of College and University Business Officers offered workshops for financial aid administrators. The American Association for Higher Education established a network of faculty contacts. The Association of Physical Plant Administrators provided information on physical access. The American Association of Collegiate Registrars and Admissions Officers developed a publication on recruitment and admission.

In 1978, the Office for Civil Rights through its national and regional offices provided a policy interpretation service, an access guidebook, and employment manuals (Bailey, 1979). Ten years later, OCR's technical assistance program offered procedural information, curriculum and assessment materials, telephone and on-site consultation,
and personnel training sessions (House Committee on Education and Labor, 1988).

At the 1991 HEATH Liaison Group Meeting, Alice Wender, the Chief of the Technical Assistance Branch of OCR, said the agency prefers to conduct cost-free consultations rather than perform labor intensive and expensive investigations. Postsecondary institutions are therefore encouraged to seek technical assistance from a regional office.

Technical assistance has also been available to colleges by such groups as the Association on Higher Education and Disability, American Coalition of Citizens with Disabilities, Alexander Graham Bell Association for the Deaf, American Association of University Affiliated Programs for the Developmentally Disabled, American Foundation for the Blind, and the Architectural Barrier Removal Information Center (Biehl, 1978; HEATH, 1991).

Despite the availability of technical assistance, some of the section 504 regulations were not clear. Information concerning those requirements, therefore, would have been limited. Still, a variety of sources offered sufficient information and assistance to allow colleges to implement the general package.

Compliance with Administrative Requirements

Few studies have been conducted to determine the compliance of colleges and universities with section 504’s administrative duties. Based on available information, it
appears that most institutions have made an effort to comply with many of the required activities.

Each of the 155 colleges and universities responding to a 1983 national survey had appointed a section 504 compliance officer (Marion & Iovacchini, 1983). Also, 65% had established a section 504 committee. These committees served as either an advisory board (52%), a policy-making committee (7%), or a combination advisory and policy-making committee (35%).

Typically, advisory committees: inform college personnel of disabled students' rights; inventory institutional resources; prioritize services and accommodations; resolve issues; ensure access; assist in seeking and maintaining adequate funding levels; establish a systematic grievance policy; and review progress (Dalke, 1991; McLoughlin, 1982).

Although not mandated by section 504, most colleges have established an on-campus DSS program (Mangrum & Strichart, 1988). The staff of these programs work with administrators, faculty, and the disabled to ensure that services, aids, and accommodations are identified, effectively delivered, and monitored (Michael, et al., 1988).

Components of a comprehensive DSS program often include student assessment, academic advisement, remediation, auxiliary aids and services, and counseling (Mangrum & Strichart, 1985). Many DSS programs also conduct faculty inservice, help to develop campus accessibility criteria, offer
alternative testing and other academic support services, assist student services, and collaborate with community agencies (Dalke, 1991; Joyce, 1982; Miller, et al., 1979).

The data also suggest, however, that the functions of DSS programs have been limited because of expense. In a 1988 national survey of 150 DSS coordinators, 43% named "lack of funds, staff, and resources" as their primary problem (Michael, et al., 1988). A study of 63 DSS programs found that funding has not kept pace with the growing number of students being served (Sergent, 1987). The varied demands on DSS programs coupled with limited resources can interfere with the administration of necessary services.

**Enforcement of Section 504(E)**

The effectiveness of a statute is dependent upon clear compliance guidelines and significant consequences for failure to comply (Meyen, 1978). The saga of developing enforcement procedures that directed OCR and colleges in compliance was one of confusion and delay.

**Section 504 Enforcement Procedures**

Subpart G of the section 504 regulations simply states that the procedures under Title VI of the 1964 Civil Rights Act are to be used to enforce section 504. Since section 504 covers education, employment, and social services, Congress delegated the responsibility of clarifying subpart G to DHEW and the Department of Labor. These federal agencies, however, turned the matter back to Congress saying
they did not possess the authority to issue such a clarification (Welch-Wegner, 1983).

In 1978, Congress amended the 1973 Rehabilitation Act with Public Law 95-602 to extend the remedies, procedures and rights of Title VI of the 1964 Civil Rights Act to persons with disabilities under section 504(G). Accordingly, persons may file a complaint with OCR. The agency was authorized to investigate, notify the recipient if there is a violation, and then seek voluntary compliance. If compliance cannot be secured, OCR may pursue enforcement through federal fund termination proceedings.

OCR and aggrieved persons may also turn to the federal courts since the judiciary is authorized by Congress to "enforce or charge a violation." In Nathanson v. Medical College of Pennsylvania (1981), the court held that in order to establish a section 504 violation, the plaintiff must prove she is handicapped and otherwise qualified for participation in the program, that the program receives federal assistance, and she was denied benefits of, or subject to, discrimination under the program.

In addition to investigating complaints, OCR is responsible for conducting section 504 compliance reviews. The institutions targeted for review are selected by examining information gathered in surveys conducted by OCR and from other sources that assist the agency in identifying potential areas of systemic discrimination. Again, OCR seeks
voluntary compliance and may withdraw federal funds in the case of noncompliance.

Effective enforcement is dependent upon clearly stated and defined regulations. A major problem with section 504, which greatly affected OCR enforcement activities, was that Congress did not define originally whether the statute was to be applied to the entire institution or to just those specific programs that receive federal funds.

Determining Section 504 Coverage

Section 504 clearly states that recipients of federal funds may not discriminate on the basis of handicap. However, the statute does not indicate whether the entire institution must comply regardless of the number of programs or activities that receive federal assistance, or if section 504 applies to only those specific programs and activities that directly receive funding (Griffin, 1982).

The variety, magnitude and pervasiveness of federal monies received by a college makes it difficult to distinguish where support to a program ends and institutional support begins. Since Congress did not give a precise definition of section 504 coverage, the matter ended up in the federal courts.

In *Wright v. Columbia University* (1981), the district court held that where a university received funds, all component programs must comply with section 504. The court reasoned that every program benefitted indirectly from the
aid because the institution was freed from certain financial obligations and could therefore redirect funding.

However, a divided Supreme Court in Grove City College v. Bell (1984) reached a different conclusion. After trying to analyze the intent of Congress concerning Title IX, the Court ruled that since federal student aid goes "to the college's own financial aid program...it is that program that may be properly regulated under Title IX." The college's educational program as a whole was not obliged to comply, as "the fact that federal funds eventually reach the college's general operating budget cannot subject Grove City to institution-wide coverage."  

On the same day that Grove City was decided, the Supreme Court applied its program-specific conclusion to section 504 in Consolidated Rail v. Darrone (1984). The Court stated:

Section 504...prohibits discrimination only by a "program or activity receiving Federal financial assistance." Clearly, this language limits the ban on discrimination to the specific program that receives federal funds.

Immediately following Grove City and Consolidated Rail, OCR announced it was adopting the position of the Supreme Court that the civil rights laws were program-specific (Paulus-Sorenson, 1985). Within the next four years, more than 800 civil rights complaints filed with OCR were dropped or narrowed because they did not fit the standards set by
the Supreme Court (Leatherman, 1988, p. A-1).

During the same period, a coalition of more than 200 civil rights groups, along with educational organizations, college students, faculty members and administrators, lobbied Congress for the passage of a law to expand coverage of the civil rights laws beyond specific programs that receive federal funding (Leatherman, 1988; Salamone, 1986). In response, Senators Kennedy (D., MA) and Hawkins (D., CA), along with Representative Simon (R., IL), introduced a bill to overturn the effects of *Grove City* (S.431 and H.700).\(^9\)

Congress adopted the bill in 1987, but it was vetoed by President Reagan who charged that the bill was intrusive and a threat to the free practice of religion (Leatherman, 1988). Previously, the Reagan Administration had proposed that federal aid be provided to private schools without subjecting those institutions to federal regulation (Orfield, 1989; Salamone, 1986).

On March 22, 1988, Congress decisively overrode the presidential veto and enacted the Civil Rights Restoration Act of 1987 (P.L. 100-259). The Act defined "program or activity" to mean "all the operations of...a college, university, or other postsecondary institution...any part of which is extended federal financial assistance."\(^{10}\) Therefore, if any program or activity receives federal funds, then all operations of the college may not discriminate (Hendrickson, et al., 1990).\(^{11}\)
OCR Enforcement of Section 504

The House Committee on Education and Labor (1988, p. 1) found that OCR since 1981 "adamantly failed to enforce the civil rights laws," including section 504. The Committee accused OCR staff of actively encouraging individuals to withdraw their complaints, discouraging others from filing, and using technical assistance "to decrease the complaint load and to diminish the pressure to investigate and close cases" (House Committee on Education and Labor, 1988, p. 4).

The Reagan Administration severely restricted OCR's enforcement role in education (Orfield, 1989). The Administration, favoring local and state control, proposed that private institutions receive federal aid without being subjected to federal regulation (Salamone, 1986; Washington Council of Lawyers, 1982).

As a consequence of the Reagan Administration's opposition to civil rights enforcement, "OCR has been beset with confused policy directives, administrative mismanagement, numerous changes in leadership, and severe reductions in resources," losing 35% of its budget and 25% of its staff from 1981-88 (House Committee on Education and Labor, 1988, p. 6). To the extent that enforcement has occurred, no postsecondary institution has ever lost its federal funding to a finding of discrimination (Hendrickson, et al., 1990).

Most violations of civil rights laws are settled at one of four stages during the investigative process: (1) early
complaint resolution (ECR); (2) pre-letter of finding (LOF) negotiations; (3) voluntary settlement after a finding of discrimination is made and the LOF is issued; and (4) administrative enforcement (OCR, 1987).

The 1988 report by the Committee on Education and Labor includes data on section 504 complaints and compliance reviews concerning education from fiscal 1981 to May 5, 1988. Complaint investigations on the basis of handicap initiated between 1981 and 1988 numbered 5,288, or 51.4% of all protected groups (House Committee on Education and Labor, 1988, p. 83). Most were closed with a finding of "violation corrected."

Compliance reviews on the basis of handicap initiated between fiscal 1983 to May 5, 1988 totalled 460, or 33% of all reviews (House Committee on Education and Labor, 1988, p. 72). Of this, 81.4% were closed by pre-LOF settlement, 2% by post-LOF settlement, and 18.3% with a finding of no violation.

Since 1981, OCR has closed most of its complaints and compliance reviews in which violations of any of the civil rights laws have been found, including section 504, by means of LOF (House Committee on Education and Labor, 1988). Thus, OCR records indicate that the problems were corrected even though the recipient may have only promised that it will take action to correct the violations.

If the statute was not adequately enforced by OCR, then
compliance data from OCR is questionable. Furthermore, without the threat of losing their federal funds, colleges have had little incentive to comply with section 504.

Institutional Compliance with Section 504

Since few studies have addressed section 504 compliance by postsecondary institutions, the actual degree of progress is difficult to determine. Most colleges appear to have made an attempt to comply with the statute. Full compliance, however, has not been achieved.

When the section 504 regulations were issued in 1977, willingness to comply "has seemed to be the rule, not the exception" (Bailey, 1979). By 1980, colleges were beginning to reach out to prospective disabled applicants and to develop strategies for facilitating their attendance (Barris, 1980).

Marion and Iovacchini (1983, p. 135) concluded from their study of 155 institutions that "colleges and universities across the country have made a serious effort to carry out the regulations implementing section 504." According to Thomas and Thomas (1991, p. xi):

...the information indicates that most postsecondary institutions have risen to the challenge (of section 504) by devising ways of meeting the legal and moral obligations of ensuring equal access to educational opportunities for their students.

Despite a general willingness to comply, not all postsecondary institutions are in full compliance with section
504. Only 193 colleges and universities were listed in 1981 as accepting the learning disabled (Putnam 1984, p. 70). By 1985, only 279 out of 1,841 postsecondary institutions surveyed provided services of any kind to students with disabilities (Mangrum & Strichart, 1985, p. 1).

A recent study of 57 institutions in Virginia found that students with disabilities continue to face such barriers as lack of services or accommodations and inaccessible buildings (West, et al., 1993). Also, students reported discrimination and resistance from faculty and others, and most said they were not included in developing disability-related policies.

Implementation of specific section 504 regulations requires cooperation from a variety of offices and services across the campus. Admissions, physical access, academic accommodation, and nonacademic student services are among the areas affected.

Admission

Section 504(E) prohibits discrimination on the basis of handicap in recruitment and admission. The percentage of all postsecondary students reporting a disability rose from 6% in 1976 to 10.5% in 1987. Although several reasons have been cited for the increase, institutional response to section 504(E) is considered the major factor.

Effect of Section 504(E) on Recruitment

Although section 504(E) does not require affirmative
action, postsecondary institutions have had to make certain that their recruitment activities comply with the law. Recruiters must use accessible sites, accurately portray campus and program accessibility, include a statement of compliance on all materials, and have volunteers available to assist disabled persons (Hanson, 1979; Redden, et al., 1985).

Furthermore, recipients are prohibited from requiring student applicants to report their disability prior to admission.13 This mandate applies to every form, including medical reports, housing requests, and financial aid applications (Vogel, 1982).

**Effect of Section 504(E) on Admission**

As with recruitment, admissions policies and practices may not discriminate on the basis of handicap. The greatest impact of section 504(E) appears to be on selective institutions that consider standardized tests, high school rank, and grade point average (Sedita, 1980). These criteria must not reflect the applicant’s disability. If they do, additional information must be gathered (e.g., interviews and references) to determine the student’s ability to succeed in college (Stewart, 1988; Mangrum & Strichart, 1985).

For instance, many high school students with disabilities have a lower grade point average and class rank than their nondisabled peers because of the problems associated with their disability (Mangrum & Strichart, 1985). The
learning disabled, for example, have difficulty processing information but their intelligence is at least average (Ysseldyke & Algozzine, 1988).

Also, many disabled students do not have a strong academic background (Stewart, 1988). Their disability often delays them from completing coursework, and part of the day for some students in elementary through secondary school may be spent receiving therapy and/or other support services.

Concerning timed admissions tests, many disabled students take longer than the nondisabled to complete a test because of their disability. They do not have difficulty with test content, but rather with controlled time limits (Mangrum & Strichart, 1985). Likewise, having a blind applicant take a written exam that is not in Braille print clearly disadvantages that individual.

Both the ACT and the SAT were modified in 1978 to accommodate persons with disabilities (Cardoni, 1982). Scores, however, are reported with a statement disclaiming reliability (Putnam, 1984). The notation clearly suggests that the applicant has some type of disability (Mangrum & Strichart, 1988).

In 1984, Oltman and Hartnett found that only 6% of respondents to their survey said they interpreted the "flagged" scores differently from other scores. The respondents elaborated, however, that they considered additional information about disabled applicants as derived from
on-campus interviews and/or teacher references.

If nondiscriminatory standardized tests are not available, then the lack of test score may not be used to exclude the disabled and alternate criteria must be devised.\textsuperscript{14} Colleges have had difficulty implementing the regulations that address the use of alternative tests. DHEW failed to prepare a list of nondiscriminatory alternative tests, and since "disproportionate adverse effect" was not defined, institutions have not known on what basis they would be subject to that mandate (Willingham, 1987).

Bennett (1984) suggested that colleges make certain that any alternative admissions criteria: accommodate specific disabilities; offer test content that reflect aptitude or achievement, rather than impairment; provide evidence of predictive validity; and avoid preadmission inquiry.

Concerning colleges with open admission, disabled persons typically have had no difficulty gaining entry into these institutions (Schmidt & Sprandel, 1982). To enter, all a student generally needs is a high school diploma or its equivalent (Mangrum & Strichart, 1985). For these institutions, the question is not whether the student will be admitted but rather if he or she will be able to succeed.

Admissions personnel, particularly at selective institutions, raised two major concerns about the section 504(E) regulations. The first issue was that the definition of "handicapped" person is too broad. The second concern was
that the term "otherwise qualified handicapped" person is not clear, and could thus force a college or program into admitting students whose handicap prevents them from meeting program requirements.

**Definition of Handicapped Person**

Since section 504(E) prohibits preadmission inquiry, students must identify themselves as being handicapped in order to receive special services. During the admissions process, this may include the provision of alternative selection criteria. The first consideration at the admissions level in such instances is whether or not the applicant is indeed disabled and if the handicap limits that student in any major life activity (Stewart, 1988).

The broad, vague definition of "handicapped person" under section 504 has caused a certain amount of confusion and controversy. The regulatory guidelines point out that the term *physical or mental impairment* is not defined by a listing of specific conditions because of the potential length of such a comprehensive list (DHEW, 1977).

As a result, educators often differ in their understanding of what a disability is and who should be considered disabled (Perry, 1981). Less visible handicaps such as learning disabilities have been particularly troublesome (Sedita, 1980). Furthermore, the tremendous variety of learning problems among the learning disabled make this group so heterogeneous that it is likely no uniform
definition will cover all of them (Levine, 1987).

A related concern of college officials was that persons with minor problems and others with conditions that are outside of the more widely recognized handicaps would be eligible to receive special services (Abrams & Abrams, 1981; McLoughlin, 1982). The disabled student population would therefore swell, resulting in a tremendous strain on institutional resources.

Of particular concern to the academic community were persons who are temporarily disabled, alcoholics, and drug addicts. A fourth ailment that has raised concern at all levels of education involves persons with a contagious disease, such as AIDS. Each of these were found to qualify as handicapping conditions under section 504.

Shortly after the section 504 regulations were issued by DHEW, colleges asked whether persons with temporary disabling conditions are to be considered handicapped (Guthrie, 1979). In a memorandum to the Chicago Regional Office (9/29/78), DHEW stated that "the category of persons considered 'handicapped' is not limited to persons with severe, permanent or progressive conditions."15 Temporary conditions are therefore protected under section 504.

Concerning the inclusion of alcoholics and drug addicts, the Attorney General on April 12, 1977, issued a formal opinion that said these conditions qualify as physical and mental impairments (GAO, 1981). In response to
issues raised by employers and college officials, Congress adopted a clarifying amendment in 1981 (P.L. 95-602) that is applicable to education. The amendment explains the circumstances under which the term handicapped individual does not apply:

...[It] does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.16

A contemporary issue has been whether those with AIDS and other contagious diseases are legally defined as handicapped persons. School officials at all levels were most concerned about the risk of transmission and potential harm to others (Jones, 1986). In School Board of Nassau County v. Arline (1987), the Supreme Court ruled that such persons are physically impaired and therefore protected from discrimination under section 504.

Definition of Otherwise Qualified

After determining that the student is a handicapped individual, the next issue to be considered is whether or not the person is "otherwise qualified" (Stewart, 1988). The section 504 regulations define an otherwise qualified individual as one who meets the academic and technical standards requisite for admission. In other words, is this student qualified even though he or she is disabled?
Some educators worried that disabled students who satisfied program requirements in every respect except for their handicap would have to be admitted, and academic standards would therefore be jeopardized. As Dalke (1991, p.2) points out, however:

The intent...is not to allow any person with a handicap access to a program merely because the person has a handicap. Rather, the intent is to ensure that individuals are not denied admission to a particular program solely on the basis of a disability.

According to DHEW’s regulatory analysis, for instance, Congress did not intend that a blind person possessing all of the qualifications for driving a bus except sight be considered for the job of driving (Mangrum & Strichart, 1988). Determining whether a particular standard is discriminatory, however, is often difficult.

Since academic and technical standards vary depending on an institution’s policies and programs, a disabled applicant may be considered qualified by one program and not by another (Ross & O’Brien, 1981). No clear answers are available as to whether a standard’s effects are discriminatory, or if a standard is acceptable because it is based on a directly related licensing requirement (Bailey, 1979).

With neither Congress nor DHEW having defined "otherwise qualified," the issue quickly reached the courts. The Supreme Court handed down a landmark decision in Southeastern Community College v. Davis (1979) two years after the
section 504 regulations were published by DHEW.

The Court held that the nature of a person's handicap may be considered to determine if he or she is qualified for a particular program (Flygare, 1979). Agreeing with the American Council on Education, the Court stated that the phrase otherwise qualified handicapped individual refers to a person "who is able to meet all of a program's requirements in spite of his handicap."17

Although admission may not be denied solely by reason of handicap, disabled applicants must still satisfy those academic and technical standards which apply to all other students despite their disability. Persons who fail to meet such criteria are not "otherwise qualified" (Griffin, 1982).

Courts have also made clear, however, that the denial of admission solely on the basis of handicap will not be tolerated, and disabled persons must be given the opportunity to show that they are otherwise qualified for admission. In *Kling v. Los Angeles County* (1985), the Supreme Court ruled that the nursing school inappropriately denied the student admission because it only considered her Crohn's Disease. The Court noted that the student must be allowed to prove whether or not she meets the admission criteria.

The Tenth Circuit Court of Appeals in *Pushkin v. Board of Regents of the University of Colorado* (1981) concluded that the university had violated section 504 by denying a student admission to its psychiatric residency program.
solely on the basis of his multiple sclerosis. The court noted that the student presented strong evidence that demonstrated his ability to participate.

Ability to participate also extends to the safety of others who may be affected by the disability. The *Davis* ruling noted that the student was deaf and her reliance on lip reading may place her patients in danger. In *Grimard v. Carlston* (1978), the First Circuit Court of Appeals upheld the temporary suspension of a nursing student with a broken ankle so as not to jeopardize the safety of patients.

The Second Circuit Court of Appeals in *Doe v. New York University* (1981) ruled that the student was not qualified for readmission because of a significant risk that her past destructive and anti-social behavior could reoccur. Thus, the court gave substantial weight to the likelihood of harm.

Recent cases involving persons with a contagious disease have drawn parameters on determining the likelihood of harm. The Supreme Court in *School Board of Nassau County v. Arline* (1987) said reasonable medical judgements about the nature, duration and severity of the risk must be evaluated. Speculative risk of transmission does not outweigh the person's right to participate.

Likewise, in *Chalk v. U.S. District Court of Central District of California* (1988), the Ninth Circuit Court of Appeals warned that basing a decision to exclude persons with AIDS on "irrational fears and myths" violated section
An institution may, however, make reasoned judgments about performance related to handicap (Thomas, 1989). Also to be considered is whether the disabled person could become otherwise qualified with reasonable accommodation. The Supreme Court in *Arline*, and the district courts in *Carter v. Bennett* (1987) and *Byrne v. Board of Education West Allis* (1990) ruled that section 504 requires employers and educational agencies to make any reasonable accommodation necessary that would allow a disabled person to perform essential functions and thus become otherwise qualified.

If the disability cannot be reasonably accommodated, then the individual would not be considered otherwise qualified. Reasonable accommodations, discussed later in this chapter, have been defined as those modifications that do not cause an undue financial or administrative hardship on the institution, nor result in a substantial alteration in the fundamental nature of the program or its standards.

In sum, when considering disabled persons for admission, postsecondary institutions are to determine: (1) whether the student is a handicapped person; (2) if so, whether the person is otherwise qualified; and (3) if not otherwise qualified, whether the student can become so with a reasonable accommodation.

**Enrollment of Students with Disabilities**

The enrollment of disabled students in postsecondary institutions provides one indication of the effectiveness of
section 504(E) in prohibiting discrimination on the basis of handicap. Also to be considered are other factors besides section 504(E) that influence enrollment.

A 1976 survey by the Bureau of Census found that 6% of the estimated 12 million postsecondary students reported having some type of disability (Perry, 1981). By 1987, 10.5% of the nation's 12.5 million college students reported having at least one disability (HEATH, Fall 1989, p. 4). Clearly, these figures show that while college enrollments remained fairly stable, the number of students reporting a disability greatly increased.

Significant gains were made particularly during the early years of section 504 implementation. A 1978 survey found that 32% of disabled adults aged 18-34 had some college instruction compared to only 18% of those in the 35-44 age category, thus indicating a rising level of formal education among the disabled (Lando, et al., 1983, p. 78).

Studies of college freshmen show steady increases in the number of students reporting a disability. In 1978, the President's Committee on Employment of the Handicapped (PCEH) found that 2.6% of all freshmen had a disability (Hippolitus, 1985, p. 1). More than twice as many freshmen (6%) reported having a disability in 1981 (Kirchner & Simon, 1984, p. 80). By 1984, the figure rose to 7.3%, representing an increase of about 150% over a six-year period (Wilchesky, 1986, p. 4).
According to the 1985 PCEH survey, the percentage of college freshmen reporting a disability had begun to level off at 7.4% (Hippolitus, 1985, pp. 1-2). Still, the effect of the rapid increase in the number of disabled students was apparent. Postsecondary institutions serving a "significant number and variety of disabled students" rose from about 30 in 1978 to over 750 by 1986 (Hartman, 1986, p. 1).

Institutional compliance with section 504 has been cited as the major reason for the steady rise in students with disabilities attending college (Dailey & Jeffress, 1981; Mangrum & Strichart, 1985; Hippolitus, 1985; Vogel, 1991). Also, the number of schools that actively recruited the disabled rose from 25% in 1980 to over 50% by 1986 (Brelan, et al., 1986). A 1984 survey found that 98% of the responding colleges considered the admission of disabled applicants without prejudice (Oltman & Hartnett, 1984).

Credit has also been given to the growth and improvement of special education programs in the primary and secondary schools under Public Law 94-142. With an emphasis on academic instruction in regular classroom settings, more disabled students developed the skills necessary for college (Hourihan, 1980; Will, 1986; Yanok, 1987).

Furthermore, the prevalence of college freshmen with learning disabilities increased more than tenfold from 1978 to 1985 because of improved diagnosis and special education programs at the graded schools (Brill, 1987; Hartman, et
al., 1985; Mangrum & Strichart, 1988). Also, with jobs becoming increasingly difficult to obtain without a college degree, and given the high rate of unemployment (67%) and underemployment among the disabled, more persons with disabilities have realized the need to enter college (Barris, 1980; Harris, et al., 1986; Edgar, 1987).

Another factor in enrollment growth has been the development of transition programs that promote the linkage of high school personnel and college officials to assist disabled students with their entrance into postsecondary education. Congress authorized funds to establish such services in 1983 (P.L. 98-199). For fiscal year 1985, Congress appropriated $6.3 million for secondary and transition services, and $5.3 million for postsecondary services for the disabled (Wallace, 1986, p. 60).

Other reasons for the increased enrollment of disabled college students include: medical advances, public acceptance, and state laws (Perry, 1981); the elimination of physical barriers (Kelly, 1984); advocacy pressure, rising institutional costs, an expected decline in the general enrollment, and colleges abiding by their social mission (Wilchesky, 1986); and increased confidence by the disabled that they can succeed, open admissions, financial aid, and low tuition (Sedita, 1980).

In 1988, the American Council on Education found that the percentage of college freshmen with a disability had
dropped to 6% (Thomas & Thomas, 1991, p. ix). During the mid-1980s, special education at the lower grades experienced a leveling-off of students served. Disabled students represented 6.6% of the total school population in 1987-88, compared to 10.97% in 1985-86 (USDOE, 1989, p. 69). Also, the number of those exiting secondary schools for any reason decreased by 2% between 1985-86 to 1986-87.

An increased dropout rate among secondary students with disabilities was a significant factor in the lower number of students being served in special education programs (USDOE, 1989). In addition, fewer disabled students were graduating from high school with their age cohort peers (OSERS, 1988). Many of these students were in school longer to complete diploma requirements, and some even aged-out.

The national "excellence in education" movement of this period has been credited as being a major factor in causing the increased dropout rate and the decrease in the number of disabled students exiting high school on time (Shepard, 1987). Promoted by the Reagan Administration, the movement emphasized common-core academics, advanced standards, and tougher graduation requirements at the secondary level (Edgar, 1987; Knowlton & Clark, 1987).

As a result, the academic and nonacademic alternatives formerly offered to disabled students were reduced, and the opportunity to earn a regular high school diploma was made increasingly unattainable (Benz & Halpern, 1987). Many
disabled students either stayed in high school longer or became discouraged and dropped-out. Seeing this struggle, many teachers and parents did not encourage disabled students to plan for college (Fishlock, 1987).

During the 1986-87 academic year, fewer than 15% of disabled students who exited high school for one or two years entered postsecondary education or training (USDOE, 1989). Trade or vocational schools were the most commonly attended institutions (8.1%), followed by a two-year or community college (6%), while only 2% attended a four-year institution.

In contrast, 56% of nondisabled students participated in postsecondary training, of which 28% went to four-year colleges and 18% enrolled in two-year colleges (USDOE, 1989). The higher drop-out rate for special education students (36%) than for the nondisabled (14-18%) undoubtedly contributed to the relatively lower rate of participation (USDOE, 1989).

By 1991, however, the percentage of college freshmen that reported having a disability again rose to 8.8% (HEATH, Sept./Oct. 1992). The stringent high school requirements of the excellence in education movement were relaxed during the Bush Administration, and more disabled students were educated with their nondisabled peers in the regular classroom (OSERS, 1991).

Also, recent advances in assistive technology have
allowed disabled students greater access to academic
instruction at all levels of education (HEATH, Spring 1990).
Computers, for instance, have significantly aided students
in compensating for their particular disability.

The data show that after the section 504 regulations
were issued by DHEW in 1977, a steadily increasing number of
students with disabilities have entered college. To ensure
that these students can actively participate in all aspects
of college life, the campus, at the very least, must be
physically accessible.

**Physical Access**

Section 504(C) requires institutions to make certain
that the physical campus does not exclude, deny benefits to,
or discriminate against persons with disabilities by virtue
of being inaccessible. The academic community was espe­
cially concerned about the required compliance schedule and
the expense of making the physical campus accessible.

**Compliance Schedule**

With the exception of structural modifications, pro­
grams and activities were required to be accessible by
August 2, 1977. The deadline for completing all required
structural modifications was June 3, 1980. The American
Council on Education complained that the schedule for remov­
ing physical barriers was too tight (Biehl, 1978).

Further complicating the situation, precise physical
access standards of the section 504(C) requirements were not
issued by the Architectural and Transportation Compliance Board (ATCB) until 1982 (Brooks, 1983). Institutions were therefore left with little guidance regarding new construction and structural modification (Hanson, 1979).

Even though the compliance schedule designated by DHEW appeared to be tight, colleges should already have been in compliance with ANSI (American National Standards Institute) standards as of September 1, 1969, under the Architectural Barriers Act of 1968 (P.L. 90-480) (Andersen, 1980). In fact, the ATCB standards closely followed existing ANSI requirements (Brooks, 1983). Another concern of the academic community, and one that was far more valid, is that of expense.

Institutional Expense

Although no reliable figures are available, cost estimates for modifying a college campus have ranged from $0.4 million to $2.2 million (Welch-Wegner, 1983, p. 446). The cost of installing an elevator alone in 1979 was between $60,000 and $70,000 (Bailey, 1979, p. 106). To retrofit an entire campus at once was prohibitive for most colleges.

Postsecondary institutions, however, did not have to completely alter their entire campus facilities as the section 504 regulations offer flexibility. First, "program accessibility" is required, not a barrier-free environment. This means that architectural barriers must be removed only when access cannot be achieved in any other way (Phillips,
1986). For example, if no elevator exists in a particular building, then any class held in that facility for which a wheelchair-bound student registers must be offered on the ground floor.

Second, departure from a particular ANSI requirement is permitted when it is "clearly evident that equivalent access to the facility is thereby provided."22 Third, facility alteration is to be made "to the maximum extent feasible."23 The intent of this phrase is to cover those cases in which a completely accessible alteration would be impractical or prohibitively expensive (Biehl, 1978).

In some cases, however, the only option is to do whatever is necessary to make the facility accessible (Andersen & Coons, 1979). Costs are typically higher when modifying existing buildings and substantially less when new facilities are designed to be accessible (Welch-Wegner, 1983). High costs may also reflect poor technical advice or failure to consult architects familiar with access problems.

For example, Stanford University's first estimate of needed structural modifications was $8 million (Bailey, 1979, p. 91). With assistance from HEATH, a second estimate ranged from $500,000 to $800,000. Besides securing good technical advice, some postsecondary institutions have used federal grants to help remove barriers, and included the scheduled removal of barriers as part of the capital budget (Dailey & Jeffress, 1981).
Compliance with Physical Access Requirements

Few studies address institutional compliance with the physical access requirements of section 504(C). Although a general picture can be drawn from existing data, sufficient information does not exist to substantiate a conclusion.

After the regulations were issued, colleges and universities attempted to make as many classes and buildings accessible to disabled students as possible (Thomas & Thomas, 1991). Significant progress was reported, for example, at the University of Maryland (Kelly, 1982) as well as the public colleges of Alabama (Phillips, 1986) and Kentucky (Stilwell, et al., 1983).

Many postsecondary institutions, however, have not achieved complete physical access largely because of the costs associated with new construction and/or structural alteration (Mopsik & Agard, 1985). The ANSI standards provide numerous design specifications within sixteen major categories. The entire physical campus is subject to these requirements, including both old and new facilities.

A study of 483 postsecondary institutions found that ramps, future construction plans, and route of entrance to each building were in greatest compliance, while accessible main entrances and ratio of parking areas ranked fourth (Williams & Hodinko, 1988). The institutions were in least compliance with alarm systems, elevators with special features, doors with tactile surface warnings, and ratio of
accessible public telephones.

Williams & Hodinko (1988) identified insufficient financial support, apathetic approaches toward compliance, lack of competent personnel, and negative attitudes as factors contributing to noncompliance. However, they concluded that in view of the costs involved to become fully accessible, postsecondary institutions are in "reasonable" compliance. They suggested that although progress toward compliance has occurred, self-evaluation should be on-going and governmental aid would promote fuller compliance.

Program accessibility requires more than physical access. Students with disabilities must also be accommodated in academics and in non-academic student services.

**Academic Accommodation**

Section 504(E) requires postsecondary institutions to make adjustments in their academic programs and activities to ensure against the discrimination of qualified handicapped students on the basis of their handicap. College officials had difficulty determining those situations that require accommodation and those that do not, and the extent that a disability must be accommodated.

**Institutional Requirements**

Accommodation refers to the adaptations or modifications that facilitate the equal participation of disabled persons (Welch-Wegner, 1983). In some instances, a person's disability places him/her at a distinct disadvantage to the
nondisabled if they are treated equally. For example, requiring a blind student to take a written test without the aid of Braille might be treating all students equally, but it disadvantages the blind student.

To ensure disabled persons have equivalent opportunities to obtain the same result, benefit, or level of achievement as the nondisabled, some type of academic modification and/or support service may therefore be necessary (Abrams & Abrams, 1981; Dalke, 1991). Section 504(E) specifically targets academic requirements, rules, and course examinations. The statute also requires the provision of auxiliary aids.

Academic requirements are to be modified as necessary to ensure they do not discriminate on the basis of handicap. Adjustments must be made according to the individual needs of the students. For example, a college should permit an otherwise qualified deaf student to substitute a fine arts course for a required course in music appreciation (Mangrum & Strichart, 1988). Since many learning disabled students take longer to study, the minimum number of courses per semester might have to be adjusted.

Colleges are also obligated to accommodate disabled students in the classroom. Common modifications include the provision of: recorded lectures and outlined lecture materials; periodic opportunities for questions, review, and summation; taped texts; and peer notetakers (Yanok, 1987).
Postsecondary institutions may not impose upon disabled students other rules that have the effect of limiting their participation in educational programs and activities. For example, students with disabilities may not be prohibited from using tape recorders in the classroom or having guide dogs in buildings.

In its course examinations or other procedures for evaluating the academic achievement of students, the college is to ensure that test results represent the student’s actual achievement and not the disability. This requirement makes it necessary to develop alternative testing procedures (Biehl, 1978).

Examples of common test accommodations include: extended time or untimed tests for the learning disabled; oral exams, or tests in Braille for the visually impaired; providing a sign-language interpreter, or using written tests in lieu of oral exams for the hearing impaired; and testing in accessible facilities for the physically impaired (HEATH, 1985).

Postsecondary institutions must also ensure that disabled students are not excluded from participating in educational programs, or otherwise subjected to discrimination, because of the absence of auxiliary aids. Examples of auxiliary aids and services include taped texts, interpreters for the hearing impaired, peer notetakers, tape recorders, voice-operated computers, word processors,

Acceptance of disabled students by their peers, the faculty and administration is a critical factor in ensuring equal opportunities. Negative attitudes of nondisabled persons toward the disabled have caused major integration barriers (Penn & Dudley, 1980; Stovall & Sedlacek, 1983). The attitudes of the nondisabled, then, are directly related to access and accommodation (Stewart, 1983). Colleges need to lessen attitudinal barriers and promote acceptance (Phillips, 1986; Fichten & Bourdon, 1986; Nathanson, 1980).

**Accommodation Issues**

Some within the academic community were concerned that accommodating disabled individuals to ensure equal opportunity would lower academic quality (Dalke, 1991; Grossett, 1986). Section 504(E) does not intend to impose upon academic quality as disabled students must earn their degree like any other student, albeit through compensatory means (Sedita, 1980; Jastram & McCombs, 1981; Yanok, 1985; Stewart, 1988).

Academic requirements essential to the program of instruction, or to a related licensing requirement, are not regarded as discriminatory and therefore do not need to be modified. Although section 504(E) does not define "essential," the federal courts have affirmed the right and responsibility of experts in a field to set what they
consider to be essential standards (Hendrickson, 1982). In *Davis*, the Supreme Court ruled section 504 does not require that accommodation result in a substantial alteration of the fundamental nature of the program or its standards. The Court noted that the adjustments sought by Davis would not allow her to receive even a "rough equivalent of the training a nursing program normally gives." The Court in *Davis*, however, failed to articulate a reliable test for distinguishing between situations that require accommodation and those that do not. Secretary of DHEW Patricia Roberts wrote in 1979 that the college was still "obligated to make adjustments in its programs when those adjustments are related to the method in which the program is provided rather than related to the essential content of the program" (Barris, 1980, p. 3).

Concerning academic adjustments, section 504(E) does not require that the instructor's expectations, level of academic material, nor the number of assignments be lowered (Yanok, 1987). Emphasis must instead be on the way information is given and how it is assimilated. Likewise, only those ordinary testing procedures which may interfere with the student's ability to deal with the environment, instructions, materials or mode of response need to be modified (HEATH, 1985).

Identifying what accommodations are required, however, has been difficult. Because disabled students have unique
needs, even among those who share the same type of disability, section 504(E) does not prescribe specific adjustments for every handicapping condition in all situations (Dalke, 1991). A case-by-case approach must be used, and many colleges evaluate students that request accommodation to verify their handicap and determine needed services (Welch-Wegner, 1983; Dalke, 1991).

Another major issue has been determining the extent that a disability must be accommodated. College officials were concerned that if limitations were not imposed on the accommodation requirements, the provision of such services as auxiliary aids would not be economically feasible for institutions (Walter & Welsh, 1986).

The Supreme Court in *Alexander v. Choate* (1985) noted that "while a grantee [college] may not be required to make 'fundamental' or 'substantial' modifications to accommodate the handicapped, it may be required to make 'reasonable' ones." The Court thus extended to education the concept of reasonableness that is found in section 503 dealing with employment. Recipients must accommodate the disability unless it can be demonstrated that the accommodation would impose an undue hardship on the program's operation.

The district court in *Nathanson v. Medical College of Pennsylvania* (1991) indicated that reasonable accommodations are those that do not unduly strain financial resources. Also, recipients must be allowed time to investigate and
obtain required accommodations. Along with financial considerations, the district court in *Umphries v. Jones* (1991) held that an accommodation is "not reasonable" if it also imposes undue administrative burdens.

The courts failed, however, to establish guidelines for determining when an accommodation constitutes an undue hardship. Despite the subjective limitations imposed on the accommodation requirements, institutions are not excused from making "reasonable" academic adjustments. The district courts in *Barnes v. Converse College* (1977), *Crawford v. University of North Carolina* (1977), and *Camenisch v. University of Texas* (1978) each ruled that the recipient institution was to provide interpreters for deaf students at its own expense.

In *U.S. v. Board of Trustees for University of Alabama* (1990), the district court found that denying auxiliary aids to disabled students enrolled in noncredit or nondegree programs violated section 504. The court also said that aids must be furnished when the student: (a) was not eligible for assistance from the state program, (b) could not obtain services from private sources, and (c) would be able to have meaningful access only if the aid were provided.

In sum, accommodations are to be based on the individual needs of the disabled student. Section 504(E) does not, however, mandate that an accommodation result in a substantial alteration of the fundamental nature of the academic
program or its standards, nor impose an undue financial or administrative hardship on the institution.

Compliance with Academic Accommodation

Available data do not clearly indicate the academic accommodation of students with disabilities by postsecondary institutions. While it appears that progress has been made, full compliance has not yet been achieved.

Five years after section 504(E) was issued, few institutions had sufficient support programs, trained personnel, and testing services (Cardoni, 1982). Toward the mid-1980s, gradual improvements were being reported.

A 1983 study of 155 colleges found that more than half of the institutions offered: interpreters and notetakers for the deaf; readers, Braille writers, enlargers, tape recorders, and recorded texts for the visually impaired; and tutors for the learning disabled (Marion & Iovacchini, 1983). Over 2,300 institutions that accept and offer at least some accommodations for disabled students were listed in the 1986 Directory of College Facilities and Services for the Handicapped (Oryx Press, second edition).

Despite the reported improvements, many institutions have not been in compliance. Data from 145 colleges in 1986 shows that the lack of accommodation efforts was a primary factor in the high rate of attrition for hearing impaired students (71%) (Walter & Welsh, 1986, p. 3).

Mangrum & Strichart (1985, p. 1) identified only 279
out of 1,841 institutions that provide special services for the learning disabled. Three years later, the authors concluded that many colleges do little more than admit these students and make regular services available to them. Thus, the unique needs of learning disabled students are not being satisfied.

A study of 25 learning disabled students found that none of these individuals received any needed academic assistance from their college (Cowen, 1988). In another study of 92 physically disabled students, 69% reported that the provision of academic assistance was only somewhat adequate (Burbach & Babbitt, 1988, pp. 14-7).

The accommodation requirements of section 504(E) extend beyond academic adjustments. Postsecondary institutions must also make certain that their nonacademic student services accommodate disabled students.

**Non-Academic Student Services**

Under section 504(E), disabled students must have an equal opportunity to participate in every program, activity, or service provided for other students both on and off campus. Although this mandate has the potential to greatly impact postsecondary institutions, little information is available concerning the accommodation of nonacademic student services for students with disabilities. Therefore, the actual implementation and effect of section 504(E) on such services is not known.
Institutional Requirements

All nonacademic student services must be accessible to the disabled and offered at no greater cost than for the nondisabled (Biehl, 1978). Section 504(E) specifically addresses counseling, financial assistance, health and insurance programs, housing, physical education and athletics, social organizations, and transportation.

Separate services for disabled students are permissible so long as they are "equal to" or "as effective as" those provided for other students (Biehl, 1978). However, disabled students must also be given the option of fully participating in regular programs and activities.

A college is obligated to offer the same service as it does to other students, and nothing more. Institutions are not required to create a new service for the disabled (e.g., transportation) if such services are not provided to the nondisabled (Biehl, 1978). Also, not every aspect of a program must be accessible (e.g., each dorm room) so long as equal opportunities for full participation exist (e.g., a sufficient number of accessible dorm rooms).

Postsecondary institutions must ensure that disabled students have the opportunity to enter college as conveniently and effectively as the nondisabled. Orientation programs must be accessible and provide information about how to register as well as special on-campus services (Redden, et al., 1985). Interpreters for the deaf, guides
for the visually impaired, and mobility assistance for the physically disabled need to be secured (Dalke, 1991).

Also, disabled students are to register for classes as conveniently and effectively as the nondisabled. Typical services that are provided include special academic advise­ment, priority registration, and having interpreters or a special consultant available (Redden, et al., 1985). Con­cerning academic advisement, advisors must ensure that disabled students do not end up with overly difficult course loads, courses out of sequence, or a poorly planned schedule (Mangrum & Strichart, 1985).

Postsecondary institutions that provide personal, aca­demie, or vocational counseling and job placement services to nondisabled students must provide these without discrim­ination based on handicap. Personal counseling is needed to help disabled students adjust to college, reduce their anxiety, improve self-confidence, learn life skills, increase socialization, understand their disabilities, and become self advocates (Dalke, 1991; Penn & Dudley, 1980; Mangrum & Strichart, 1985).

Career counseling must assist disabled students in reaching rational vocational decisions by offering interest and aptitude assessments, job market data, information about education and certification requirements, and job placement assistance (Dalke, 1991; Yanok, 1987). Colleges are obli­gated to ensure that all employers to whom candidate
referrals are made do not discriminate on the basis of handicapped (Olson, 1981).

Student financial aid services may not discriminate on the basis of handicap, provide less assistance to disabled students than is provided to the nondisabled, nor assist any other source of financial aid that discriminates on the basis of handicap. However, if a person's disability makes participation in a specific activity impossible (e.g., football), then denial of scholarship opportunities targeted for that activity is not discriminatory because the individual is not otherwise qualified (Biehl, 1978).

Redden and associates (1985) say institutions must: make certain disabled students have the same opportunities to learn about and receive financial assistance as other students; include in all financial aid publications a statement of compliance with section 504; and ensure that all services of the financial aid office are accessible.

An institution that provides housing to its nondisabled students must ensure that comparable, convenient, and accessible housing is also provided to the disabled at the same cost as to others. As of 1980, housing was to be made available to disabled students in sufficient quantity and variety so that the choice of living accommodations is, as a whole, comparable to that of the nondisabled.

Section 504(E) also requires institutions that assist outside sources in making housing available to nondisabled
students to assure that such housing "as a whole" is also made available to the disabled. Colleges must therefore ensure a reasonable selection of off-campus living accommodations for students with disabilities.

Any health service or insurance program that an institution offers to its students must not discriminate on the basis of handicap. Colleges must ensure that all health programs and services are accessible, that communication about them reaches the disabled, and that they are offered at the same cost as for the nondisabled (Biehl, 1978). No additional services are required. If the college infirmary, for example, treats only minor problems, then its obligation to the disabled is to offer the same and nothing more.

Section 504(E) requires colleges that provide "significant assistance" to fraternities, sororities, and similar student organizations to ensure that membership practices do not discriminate on the basis of handicap. Although "significant assistance" is not defined by the statute, most college officials assume that it means the organization would no longer exist without the assistance provided by the institution (e.g., facilities, communications and publications, financial support, personnel) (Biehl, 1978).

In providing physical education, athletics and similar programs or activities (e.g., intercollegiate, club, or intramural athletics) to any of its students, the college may not discriminate on the basis of handicap. As a
"program or activity," athletics in its entirety must be accessible to disabled persons (including spectator facilities) (Biehl, 1978).

Concerning physical education, separate or different programs must be provided if there is sufficient interest among disabled students who are unable to participate in the regular program. Modifications in physical education requirements requisite to a degree may be necessary for those students unable to fully participate, and in cases where the requirements are not essential to the program of instruction being pursued.

Transportation services are mentioned in the listing of program areas under general treatment of the disabled. Transportation offered by an institution to its students (or through an outside provider that is assisted by the college) are to provide disabled students with opportunities that are equal to the nondisabled. Covered are campus services and school activities (e.g., field trips, social and recreational functions).

The Court of Appeals in *U.S. v. Board of Trustees for University of Alabama* (1990) held that the institution's bus service did not provide disabled persons with transportation "equal to" or "as effective as" that offered the nondisabled. The court felt that the university could have provided equivalent services by installing lifts on two more buses and renting accessible vans.
Although not listed in the regulations, food services and other similar programs and activities offered by a college to any of its students must also be accessible to those with disabilities. Again, the disabled are to be afforded an equal opportunity for full participation with costs no greater than that for the nondisabled.

Accommodation Issues

The academic community was most concerned about having to ensure that off-campus providers of student services do not discriminate on the basis of handicap. Regarding student health insurance, for example, colleges have no role in creating policies and little authority to recommend changes to insurance carriers (Biehl, 1978). At the very least, an institution can show "good faith" by negotiating the fairest policy possible (Hanson, 1979).

To ensure a reasonable selection of off-campus living accommodations for disabled students, colleges can show good faith by seeking housing lists from disabled consumer groups, identifying landlords that have had disabled tenants, and inspecting facilities to make certain they are indeed accessible (Hanson, 1979). In addition, grievance procedures and other reporting mechanisms for disabled students must also be in place (Biehl, 1978).

Compliance in Nonacademic Student Services

Data to indicate institutional compliance with section 504(E) in the area of nonacademic student services is
lacking. Very few studies have been conducted, and little has been written about this subject.

During the first few years after the section 504 regulations were issued, the most frequently identified obstacles facing disabled students included physical barriers, personal adjustment, financial aid, in-depth advising, transportation, and social acceptance (Penn & Dudley, 1980).

Toward the mid-1980s, some progress was reported. A 1983 survey revealed that the following services were offered by one or more of the responding 155 postsecondary institutions: attendant care, accessible van, adaptive physical education, wheelchair loan and repair, disabled student organizations, accessibility maps, priority registration, special counseling, alternative testing, and designated parking (Marion & Iovacchini, 1983).

On the other hand, participation by disabled students in social organizations may be low. A 1988 study of 121 physically disabled students found that only one person was "very active" in a fraternity or sorority while seven were "occasionally active" and 33.9% were "never active" (Burbach & Babbitt, 1988, p. 15). Although the lack of participation may be because of personal choice, the study also noted that over 45% of the disabled students said they were concerned about poor communication with the nondisabled.

Summary Remarks to Section 504(E) Implementation

The involvement of the higher education associations in
developing section 504(E), and in providing technical assistance to colleges on how to implement the requirements, contributed to the overall acceptance of the statute by the academic community. Although the regulations raised several concerns among college officials, most institutions made a sincere effort to comply.

Problematic issues associated with the implementation of section 504(E) include: compliance costs; ambiguous language (program-specific or institution-wide coverage, accommodation requirements); unclear definitions (handicapped, otherwise qualified); lack of guidelines (alternative tests, minimal access standards); and requiring difficult tasks (comparing opportunities among students to ensure equality, making certain third parties do not discriminate).

The federal government addressed many of those issues and thus influenced the implementation of section 504(E). Congress enacted legislation to clarify enforcement procedures (P.L. 95-602), and to make section 504 apply to the entire institution if any of its programs benefit from federal funds (P.L. 100-259).

The Attorney General, DHEW, and the Supreme Court expanded the definition of "handicapped person" to include temporary disabilities, contagious diseases, alcoholism, and drug addiction. The Supreme Court ruled that an "otherwise qualified handicapped person" is one who meets the program's requirements, given a reasonable accommodation, despite the
handicap. Additional court decisions established the parameters of reasonable accommodation, and determined when institutions must provide auxiliary aids.

Most, if not all, postsecondary institutions are affected by section 504(E). The regulations require colleges to perform certain administrative functions, and to ensure against discriminatory policies and practices in student recruitment, admission, academic programs, nonacademic student services, and in relation to the physical campus. Providing access and accommodation has had an impact on the financial, material and human resources of colleges.

Definitive data concerning section 504 compliance are lacking. The information provided suggests that most colleges and universities have at least made an effort to comply. More institutions began to recruit disabled persons, the percentage of of all postsecondary students with a disability rose from 6% in 1976 to 10.5% in 1987, and most colleges voluntarily established an on-campus DSS program.

On the other hand, full compliance has not yet been achieved nationally. Many campuses are not completely accessible largely because of the expense involved. Also, several studies indicate that academic programs and nonacademic student services are still not fully accommodating.
Notes to Section 504(E) Implementation

1 See "Study Charts Rise in College Tuition in 1980s," Daily Press, April 14, 1990 (front page); and 1985 reports issued by the American Association of Governing Boards.

2 sec. 505(a)(2).

3 Sec. 505(b). Attorney’s fees may also be awarded.

4 See 45 C.F.R. sec. 80.7(b)(e) (1978).

5 sec. 505(b). Attorney’s fees may also be awarded.

6 See 34 C.F.R. sec. 100.7 (1987).

7 See 34 C.F.R. sec. 100.7 (1987).


9 Ibid., at 1221.


13 Note that the court in DeVargas v. Mason & Hangen-Silas Mason Co. (1990) ruled the Restoration Act was not to be applied retroactively.

14 Note that the figures reported by the Committee on Education and Labor in 1988 are not categorized according to educational level, nor is there any indication of the reasons why the complaints were initiated. However, the data do offer a picture of how OCR dealt with section 504 enforcement at all levels of education, including postsecondary education.

15 Subpart E, sec. 84.42(c)(1-2).

16 Ibid., at (b)(2).

17 The memorandum was signed by Melvin R. Leventhal, OCR Associate Director for Policy, Planning, and Research.

18 sec. 122(a)(6), 92 Stat. 2955, 2984-85 [codified at 29 U.S.C. sec. 706(7) (Supp. V 1981)]. See also Regulations Analysis, p. 22,686. A college may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, take into account manifestations of the condition in deciding whether he or she is qualified, and apply disciplinary rules so long as they are enforced evenly with respect to all students.


20 840 F.2d 701, at 708 (9th Cir. 1988).

21 sec. 626(a)(1).

22 Subpart C, sec. 84.21.

23 Ibid., at 84.22(d).
22 Ibid., at (c).
23 Ibid., at (b).
24 Subpart E, sec. 84.44(a).
25 Ibid., at (b).
26 Ibid., at (c).
27 Ibid., at (d)(1).
28 Ibid., at (a).
32 5 C.F.R. sec. 84.12(a) (1982).
37 Subpart E, sec. 84.47(b).
38 sec. 84.46(a)(2).
39 sec. 84.45(a).
40 Ibid., at (b).
41 sec. 84.43(a).
42 sec. 84.47(c).
43 Ibid., at (a)(1).
44 sec. 84.43(a).
46 sec. 84.43.
CHAPTER SEVEN: THE CONCLUSIONS & THE IMPLICATIONS

The purpose of this study has been to document the processes by which federal policy pertaining to higher education evolves through an historical case study analysis of the development and implementation of section 504(E). Section 504 is a federal civil rights law that prohibits recipients of federal funding from discriminating on the basis of handicap. Subpart E of that statute applies specifically to postsecondary education.

The findings of this investigation show that despite protection against federal control over higher education, as implied by the Tenth Amendment, the civil rights laws allow the federal government to use its spending power to prescribe educational policy, regulate institutional policies and practices, and enforce federal policy requirements. The authority of the federal government to protect the nation's welfare and the constitutional rights of individuals lawfully outweighs institutional autonomy and self-regulation.

The study also found, however, that federal influence on postsecondary education has not been effective in achieving full compliance with section 504(E). Colleges have had little incentive to comply as the federal government has failed to adequately enforce the statute, compliance costs must come out of limited institutional resources, and the
disabled constitute a very small minority group.

Another finding is that the development of section 504(E) followed a distinct pattern established by other civil rights legislation prohibiting discrimination on the basis of race and gender. Each of these laws were brought about and conditioned by a complex interplay of special interest groups, public demand, Congress, agencies of the executive branch, and the federal courts.

Section 504(E) departs from the other civil rights laws in its implementing regulations, which reflect the concerns of higher education and unique needs of persons with disabilities. Unlike Title VI of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments, section 504(E) does not require affirmative action. Also, the statute mandates that physical access and academic accommodation be provided on an individual rather than group basis.

The impact of section 504(E) on the policies, practices, and financial resources of postsecondary institutions is potentially greater than that of the other civil rights laws. To ensure equal educational opportunity, persons with disabilities, because of their handicaps, require more adjustments in regards to the physical campus, academic programs, and nonacademic student services than other minority groups.

The study also found that once implemented, federal policies are often modified by Congress, administrative
agencies and the courts to clarify provisions, in response to political pressures, or to make adjustments to environmental changes. Modifications to section 504(E) include the addition of enforcement provisions, changes in the definitions of "handicapped" and "otherwise qualified handicapped" person, and expansion of the statute's coverage to the entire institution if any of its programs benefit from federal funds.

Several implications are drawn from this study. As more persons from minority groups seek a higher education, postsecondary institutions will face even greater challenges from the federal civil rights statutes. To ensure against costly sanctions for noncompliance, college administrators and faculty must understand and observe their obligations under law. Furthermore, colleges and universities must be prepared to meet the unique access and accommodation demands of the section 504(E) regulations.

This investigation also offers important implications to interest groups and policy-makers. Interest groups have the potential to help generate new policy and modify existing policy by lobbying Congress, providing input to federal agencies, or approaching the judiciary. Success may depend on the calendar of national politics, whether the proposed policy or modification is incremental to past policies, and/or the political strength of the interest group.

To maintain its diversity and protect the integrity of
academic programs, higher education must assume a proactive and not reactive approach to policy development and implementation. The constitutional rights of students appear to be well protected, but the legal system also respects educators as experts in their profession.

The Conclusions

Section 504(E) is a federal law applicable to postsecondary education. The development and implementation of this policy followed the federal government’s distinct pattern of educational policy making that was established during the civil rights movement of the 1960s and early 1970s.

Federal Policy and Higher Education

The first nine amendments to the U.S. Constitution do not specify education as a federal responsibility. The Tenth Amendment, therefore, reserves the basic responsibility for building, supporting and governing colleges and universities to the states and private citizens. Because the federal government has no authority over the educational system, a comprehensive, integrated or coordinated national higher education policy does not exist. As a result, higher education has enjoyed a long history of autonomy, discretion, and self-governance.

Despite being limited by the Constitution in its ability to control education, government intervention may occur peripherally through standards or regulations authorized by
Congress to promote the general welfare, court decisions constraining actions that conflict with constitutional rights and freedoms, and conditions attached to federal grants. Even though the federal government lacks the authority to establish educational policy, it does have the power to influence it.

**Policy Development**

In the area of civil rights law, a distinct pattern of federal policy-making that affects higher education was observed by Gladieux and Wolanin (1976). The courts determined constitutional guarantees, Congress defined and gave substance to those rights by enacting legislation, and the executive branch was authorized by Congress to prepare regulations that clarify and implement that particular law. Policy development has also been stimulated by interest group politics, public opinion, national crises, the calendar of national politics, and presidential leadership.

The development of section 504(E) was similar to that of Title VI of the 1964 Civil Rights Act, prohibiting discrimination on the basis of race, and Title IX of the 1972 Education Amendments which prohibits discrimination on the basis of gender. The courts declared that persons with disabilities have a constitutional right to be provided equal educational opportunities, Congress enacted section 504 as a civil rights law, and DHEW within the executive branch developed section 504’s implementing regulations.
The path taken to reach constitutional protection for the education of disabled persons involved: (1) elites raising public and congressional awareness; (2) interest groups initiating litigation; and (3) judges applying the equal protection clause of the Fourteenth Amendment.

Prior to the 1950s, the courts were reluctant to substitute their judgement for the expertise of educators. So long as the public interest was thought to be served, the judicial system would not intervene. Unfortunately, many educators at all levels employed a number of rationalizations to deny equal access to certain groups, including the disadvantaged, racial minorities, females, and the disabled.

The turning point came when organized blacks won a Supreme Court ruling that persons of all races have the right to be provided equal educational opportunities under the Fourteenth Amendment because of the increased importance of education to individuals and the public interest (Brown v. Board of Education, 1954; Fraiser et al. v. Board of Trustees of University of North Carolina, 1958). Advocates for the disabled followed this lead and likewise approached the federal courts.

Neglected groups tended to choose the judicial process over the legislative to generate policy, as the strategy of planned litigation served to legitimize their concerns. Also, this type of action did not require the resources necessary to be successful in Congress.
The route taken by disability groups, however, differed slightly from the pattern established by the black leadership. Before the 1960s, parents and advocates for the disabled were not organized and thus lacked political clout as an interest group. Parents had little opportunity to meet since their children were excluded from the public schools. Also, the social stigma attached to having a disabled child kept many parents isolated.

The opportunity and impetus for change came not only from federal court decisions to desegregate education on the basis of race, but also from political elites. President Kennedy and Vice President Humphrey raised public awareness of the educational needs of the disabled and stimulated a series of federal enactments that provided funding for research and demonstration projects.

Encouraged, parent and advocacy groups developed into national organizations and became politically active. A major breakthrough came when these groups sued local school divisions, and the judges, in applying the Brown precedent, declared that the right to a public education for all disabled children was protected by the Fourteenth Amendment (PARC v. Commonwealth of PA, 1972; Mills v. Board of Education, 1972). Although the rulings did not have an immediate effect on postsecondary education, the door was open for the development of federal legislation prohibiting discrimination on the basis of handicap.
The steps leading to section 504 development involved: (1) disability group pressure on Congress, backed by court rulings and public opinion, to pass a civil rights law; (2) the proposal of a bill by political elites; and (3) the passage of section 504 by Congress.

Although the courts ruled that minority groups have a constitutional right to equal educational opportunities, many public education systems continued to discriminate. The judiciary, primarily responsible for interpreting the law, is limited in its ability to develop, administer and enforce national antidiscrimination measures. Only Congress has the constitutional authority to pass such laws.

Once again, advocates for the disabled followed the pattern established by other groups for getting civil rights laws passed in Congress. Racial minorities, with strong support from the public and the presidential leadership, were successful in pressing Congress to enact the 1964 Civil Rights Act. Title VI prohibits discrimination on the basis of race by recipients of federal funds. For noncompliance, institutions could lose federal monies and/or be faced with a lawsuit. The federal government thus used its spending power to prescribe and enforce educational policy.

The precedent established by Title VI allowed other neglected groups to pursue similar laws as political actors typically function in terms of clusters of issues substantially related to each other. According to the theory of
incrementalism, policy makers accept the legitimacy of previous policies because of the uncertainty about the consequences of new or different policies (Dye, 1972). Incrementalism is politically expedient, and important in reducing conflict and maintaining stability.

In response to pressure from women's rights advocates, Congress included Title IX in the 1972 Education Amendments which prohibits discrimination on the basis of sex by federally assisted educational programs. Title IX is molded in language and enforcement scheme after Title VI.

Backed by growing public support, advocates for the disabled pressed Congress for a law similar to Title VI and Title IX. With elite support from Representative Vanik and Senators Percy and Humphrey, Congress passed the 1973 Rehabilitation Act (P.L. 93-112). The Act is incremental to previous rehabilitation laws. Also, section 504 is a civil rights statute, molded in language after Title VI and Title IX. Recipients of federal funds are prohibited from discriminating on the basis of handicap.

As with Title VI and Title IX, however, section 504 is brief and ambiguous. To avoid political conflict, legislators often pass laws primarily for symbolic value. If Congress pursues an unpopular policy, it risks losing some of its legitimacy and capacity to act effectively in the future.

The brevity of section 504 caused two major problems.
The public schools interpreted the statute as applying only to employment and continued to exclude the disabled. Also, section 504 did not address enforcement. Disability groups protested and found an ally in Senator Stafford. Congress amended section 504 in 1974 (P.L. 93-516) to include education in its coverage and, like Title VI and Title IX, used federal fund withdrawal as a sanction for noncompliance. The next step was to develop the implementing regulations.

The process for getting the section 504 regulations issued involved: (1) Congress delegating to DHEW the responsibility for regulatory development; (2) interest groups pressing DHEW; (3) DHEW soliciting input from representatives of higher education and the disabled; (4) disability groups protesting further delay; and (5) DHEW presenting a final draft to Congress for approval.

As with Title VI and Title IX, Congress authorized DHEW within the executive branch to develop section 504's implementing regulations. These regulations detail the law's requirements and serve as a guideline for implementation. Regulations become official upon congressional approval.

Although strong similarities exist between Title VI, Title IX and section 504, each statute departs from the other in the development and substance of their regulations. In addition to reflecting the unique needs and characteristics of the target population, the implementing regulations for each civil rights law were also subject to different
political pressures.

Presidential administrations had great influence on the regulatory agencies in determining when a law's implementing regulations would be developed. Under the Johnson Administration, which openly supported the 1964 Civil Rights Act, DHEW promptly developed the Title VI regulations. The Nixon and Ford Administrations, however, restricted the role of federal agencies in administering the civil rights laws and DHEW therefore did not immediately draft the regulations to implement Title IX and section 504.

By the mid-1970s, several key events promoted change. During the campaign year of the 1976 presidential election, women's groups succeeded in getting DHEW to issue the Title IX regulations and advocates for the disabled achieved federal legislation that required public schools to provide a free and appropriate education for all disabled children (P.L. 94-142). Also, more colleges had become accessible to nontraditional students in response to public criticism and out of economic necessity to increase enrollments.

Focusing their attention on getting the section 504 regulations issued, disability groups found strong support in newly elected President Carter. DHEW developed preliminary drafts of the section 504 regulations with input from the disabled and the higher education associations. As a result, section 504(E) is unique from the other civil rights regulations in that it reflects the concerns of the academic
community and the demands of the disabled.

Policy Implementation

In their study of the implementation of Title IX, Gladieux and Wolanin (1976) observed that once implemented, public policies are often modified by Congress, the courts, and administrative agencies to clarify provisions, in response to political pressures, or to make adjustments to environmental changes. The section 504 regulations, like those for Title VI and Title IX, are ambiguous and susceptible to modification.

Among the reasons why the civil rights laws lack clear direction is the public's principle response to demands for equality, which has been the notion of equal opportunity. Concerned that laws to benefit one class of society would result in the destruction of coexisting rights for the remainder of society, Americans prefer to accept individual differences and the fact that some will do better than others. Ability, hard work, taking advantage of opportunities, and the element of chance are more highly valued in a competitive society than the guarantee of absolute equality.

Equal opportunity, however, is very difficult to define. Vulnerable to wide interpretation, different parts of society advocate their own definition to suit their self-interests. To avoid conflict, the legal system responds to political demands by pursuing popular policies. As a result, federal efforts in the area of civil rights have
been more opportunistic than directional.

A compromise between the concerns of college officials and the demands of the disabled, the section 504 regulations are flexible and nonspecific. Furthermore, the disabled are a very diverse group. Even persons of the same handicapping condition have unique needs. To develop a detailed, comprehensive policy that satisfies the varied demands of the disabled and addresses every concern of postsecondary institutions would be an enormous, if not impossible, task.

In addition to pressure from disability groups to issue the regulations without delay, section 504(E) was not a high priority of the government. Few disabled persons attended college, and advocates were more concerned about access to the public graded schools. With limited time and no real demand to pay attention to detail, congressional hearings were not held nor committee reports prepared to suggest how section 504(E) is to be interpreted and applied.

As with the other civil rights laws, the ambiguity of section 504(E) generated the need for clarification. In response to pressure from disability groups, Congress issued an amendment in 1978 to specify enforcement provisions (P.L. 95-602). Favoring the demands of minority groups over the policies of the Reagan Administration and Supreme Court rulings, Congress enacted legislation in 1988 that applies the civil rights laws to the entire institution if any of its programs benefit from federal funds (P.L. 100-259).
Furthermore, the Attorney General, DHEW and the Supreme Court expanded the definition of "handicapped person" to include temporary disabling conditions, alcoholics, drug addicts, and persons with a contagious disease. In response to the concerns of higher education, however, the federal courts narrowed the definition of "otherwise qualified handicapped person" in regards to admission requirements (Southeastern Community College v. Davis, 1979), and established limits on reasonable accommodation (Alexander v. Choate, 1987; Nathanson v. Medical College of Pennsylvania, 1991; Umphries v. Jones, 1991).

Although legal scholars criticized the courts for substituting their own language and that of the American Council on Education in these cases, the judiciary may lawfully enter into policy making to determine the intent of Congress for a statute that is vague and indeterminate. The courts elected to view academic officials as experts in education and were reluctant to question their judgement.

Impact of Section 504(E)

The civil rights laws were authoritatively determined, implemented and enforced by governmental institutions. The federal government thus gives public policy the distinctive and simultaneous characteristics of legitimacy, universality and coercion. Postsecondary institutions increasingly found that their decisions were being made for them off-campus by the courts, legislatures, and executive agencies.
Most, if not all, postsecondary institutions receive federal funds and are therefore subject to the mandates of section 504(E). Colleges are required to perform certain administrative functions, and to ensure nondiscriminatory policies and practices in recruitment, admission, physical access, academic programs, and nonacademic services. The potential impact of section 504(E) on an institution's financial, material and human resources is much greater than that of the other civil rights laws because disabled persons need more adjustments to achieve equal opportunity.

Determining the actual impact of section 504(E), however, is very difficult. The policy is flexible and ambiguous, and the problem of integrating the disabled in education has multiple causes. Previous research provided limited assistance to this study as most efforts targeted a small sample of institutions and their compliance with a specific regulation for a particular disability.

Enforcement data has also been of little use in determining section 504(E) impact and compliance. Although no college or university has lost its federal funding because of noncompliance with the statute, some colleges could have been in violation as OCR has a history of not enforcing the civil rights laws.

The relatively small number of section 504 lawsuits likewise does not offer a clear indication of compliance. In addition to the lack of data on out-of-court settlements,
several violations could go unnoticed because disabled students chose not to challenge them.

Despite the lack of reliable data, nearly every study reviewed in this investigation suggested that most postsecondary institutions have made at least some effort to comply with the section 504 regulations (Bailey, 1979; Barris, 1980; Breland, et al., 1986; Dailey & Jeffress, 1981; Hippolitus, 1985; Marion & Iovacchini, 1983; Oltman & Hartnett, 1984; Thomas & Thomas, 1991; Vogel, 1991; Williams & Hodinko, 1988). With the early involvement of the higher education associations in section 504 development, the immediate response of college officials to the purpose of the statute was generally positive.

Listings of accessible and accommodating campuses have grown tremendously since 1977. Nearly every postsecondary institution has voluntarily established a Disabled Student Services Office. In addition, the number of disabled students continues to rise. Although several factors have contributed to the increased enrollment, compliance with section 504 is most often cited as the major reason.

On the other hand, the studies reviewed also indicate that complete access and accommodation has yet to be achieved nationally. The most commonly cited reason for noncompliance has been that of expense. As with the other civil rights laws, the federal government did not commit a sufficient amount of funds to help institutions meet the
requirements. Modifying the physical campus, providing auxiliary aids and services, and making academic adjustments on an individual basis can be costly.

Additional factors cited for the lack of full compliance include apathy by college officials, negative attitudes toward the disabled, and lack of competent personnel. The loss of such political elites as Kennedy and Humphrey to champion disability rights may also have had an effect on compliance. Furthermore, disabled students continue to represent a small minority and they therefore do not have a large voice on campus.

The results of this investigation show that federal influence on postsecondary education, in accordance with the parameters established by the Tenth Amendment, has not been completely effective in achieving full compliance with section 504(E). Unless a disabled student is willing to follow through on a complaint and the institution is faced with severe penalties for noncompliance, college officials have little incentive to comply particularly during periods when resources are limited.

Section 504(E), however, was a needed policy. Without this statute, many postsecondary institutions would most likely not be accessible nor accommodating to disabled students. Although not fully obeyed, section 504(E) has resulted in positive change, even if the changes are minimal in some instances. The statute is also a reasonable policy
because of its flexible approach to achieving compliance based on individual student needs, and its emphasis on making one's college education the joint responsibility of the student as well as the institution.

The Implications

The results of this investigation contribute information to the limited number of studies which address the various legal and policy issues concerning postsecondary education and students with disabilities. The project also identifies changing trends that college officials should consider, and offers suggestions for future research.

Increasing Demands

Persons with disabilities, as well as members of other minority groups, will continue to seek a postsecondary education. Increased demands for equal opportunity, backed by the legal system, will seriously challenge institutional policies, practices and resources.

According to the Thirteenth Annual Report to Congress (1991), the number of potential candidates for a college education among the disabled will continue to rise. Special education laws stress early intervention, academic instruction in regular classrooms, and the provision of services that result in a successful transition from high school to college. Job market predictions emphasize the need for a postsecondary education (Mangrum & Strichart, 1988; OSERS, 1991). Also, advancements in technology allow greater
access for persons with severe disabilities.

As more disabled persons enroll in college, the demand for access, accommodation, and nondiscriminatory treatment will increase. Institutions must be prepared to meet the unique access and accommodation requirements of section 504 and the Americans with Disabilities Act (ADA, P.L. 101-336) through careful planning, policy development, resource acquisition and allocation, and program implementation.

**Liability Concerns**

Despite the impact on colleges, postsecondary institutions are solely responsible for meeting the lawful demands of their minority students. Failure to comply with the civil rights laws could result in loss of federal funds, costly litigation, and even loss of public image.

As more minority students assert their right to equal educational opportunities, colleges become increasingly vulnerable to the sanctions for noncompliance. Along with the increased number of college students with disabilities, for example, there has been a corresponding rise in disability-related litigation. Further, the ADA includes aggressive enforcement standards and more options for complainants.

To reduce the risk of liability, administrators and faculty must understand, and observe, their obligations under law. Concerning the rights of the disabled, postsecondary institutions should name committees to draft policies that comply with section 504 and the ADA. Membership must
consist of representatives from the entire campus community, including at least one person who has a disability.

Policy Making

Special interest groups have the potential to affect policy development and modification. Representatives of higher education as well as specific minorities may lobby Congress, provide input to federal agencies particularly during regulatory development, or approach the courts.

Success often depends on the political strength of the interest group. Also, a proposed policy or modification stands a better chance of being considered if it is incremental to past policies and not a radical departure. Another factor is the calendar of national politics, as political parties appear to be most receptive to interest groups during an election year.

Suggestions for Future Research

This study was broad in scope to examine the evolution of section 504(E), as well as postsecondary policy and practice concerning students with disabilities on a national level. Several issues are in need of further research.

No reliable data is available to indicate the actual costs of section 504 compliance by postsecondary institutions. Areas to be explored include cost-benefit considerations, longitudinal comparisons of real expense, and ADA compliance costs to colleges and universities.

Factors other than section 504 which have contributed
to the steadily increasing number of persons with disabili-
ties who enter postsecondary education should be examined
more fully to determine their actual impact. Such factors
include improved public school programs, related jurispru-
dence, and employment needs. Also to be investigated is
whether improvements in access and accommodation led to the
increased enrollment of students with disabilities, or if
more disabled students resulted in improved access and
accommodation.

Data concerning the impact of section 504 on student
services and extracurricular programs is also lacking.
Areas to be explored are financial aid, housing, counseling,
transportation, health and insurance programs, social organ-
izations, and other nonacademic programs (e.g., athletics).

Consideration might also be given to examining the
development of Disabled Student Services (DSS) offices, and
exactly how many campuses have them. Again, section 504
does not require DSS programs.

Few studies were found that indicate institutional com-
pliance with architectural access standards nationally. A
longitudinal study could address the findings of Williams
and Hodinko (1988) and Mahan (1974) that suggest despite
some progress, many campuses are not completely accessible.
Another topic to investigate will be the impact of the ADA
on public and private institutions.

Some historians may be interested in determining what
prompted the few colleges and universities to begin to eliminate physical barriers in the 1940s-early 1970s. Prior to sections 504 and 502, there were no provisions to enforce facility access.

The OCR data used in this study did not make a distinction between complaints involving higher education and those concerning the graded schools. Besides attempting to make such a distinction, a researcher might also examine why so many investigations were closed early and whether this indeed is an effective practice to ensure compliance.

The impact of the threat of federal fund withdrawal for violating section 504 has been seriously questioned. A viable study would be to determine the real power of this threat in facilitating compliance, and whether the ADA is more effective with its aggressive enforcement standards and increased options for complainants.

Summary Remarks

Section 504(E) was developed and shaped by the actions of federal courts, Congress, and various federal agencies. Policy development was also stimulated by interest group politics, public opinion, the influence of political elites, and the calendar of national politics. Although the actual impact of section 504(E) on postsecondary institutions is difficult to determine, an increasing number of campuses have become more accessible and accommodating to disabled students largely as a result of this public policy.
Despite their intrusion on institutional sovereignty, section 504(E) and the other civil rights laws are a necessary measure toward ending discrimination in higher education and ensuring equality of educational opportunity. Minority groups have gained a stronger voice against unfair treatment because these laws allow individuals to file a lawsuit and they also provide for the withdrawal of federal funds as a sanction for institutional noncompliance.
APPENDIX: SECTION 504 REGULATIONS

Relevant General Provisions Under Subpart A

1. Nondiscrimination.

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance [84.4(a)].

Persons with disabilities are to be provided aids, benefits or services that afford an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as the nondisabled [84.4(b)(2)]. Identical results are not required.

Although separate or different programs and activities are allowed to obtain equal educational opportunities, qualified handicapped persons may not be prevented from participating in regular programs or activities [84.4(3)]. Furthermore, persons with disabilities are to be members of section 504 planning or advisory boards [84.4(b)(1)].

2. Definitions.

Recipient means any state or its political subdivision (or instrumentality thereof), public or private agency, institution, organization or other entity, or any person to which federal financial assistance is extended directly or
through another recipient [84.3(f)].

"Federal financial assistance" means any grant, loan, contract (other than a procurement contract or contract of insurance or guaranty), or any other arrangement by which DHEW provides or otherwise makes available assistance in the form of: funds; services of federal personnel; or real and personal property, or any interest in or use of such property [84.3(g)].

Handicapped person means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment [84.3(j)]. Thus, section 504 attempts to protect individuals from the adverse effects of handicaps which are actual or perceived, past or present, physical or mental.

"Physical or mental impairment" means (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities [84.3(j)(1)].

"Major life activities" means functions such as caring
for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working [84.3 (j)(2)(ii)].

"Is regarded as having an impairment" means the person: (a) has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient as constituting such a limitation; (b) has a physical or mental handicap that substantially limits major life activities only as a result of the attitudes of others toward such impairment; and (c) has none of the defined impairments, but is treated by a recipient as having such an impairment [84.3(j)(2)(iv).

Qualified handicapped person, with respect to postsecondary and vocational education services, means a person with disabilities who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity [84.3(j)(3)].

In this context, the term "technical standards" refers to nonacademic admissions criteria that are essential to participation in the program in question (Regulations Analysis, p. 22,687).

3. Assurance of compliance.

An applicant for federal financial assistance is to submit an assurance that the program will be operated in compliance with section 504 [84.5(a)]. The assurance obligates the recipient for the period during which funding is
extended [84.5(b) and (c)].

4. Remedial action.

If DHEW finds that a recipient has discriminated against persons on the basis of handicap, the recipient is to take whatever remedial action the Director deems necessary to overcome the effects of the discrimination [84.6(a)(1)]. Likewise, where another recipient exercises control over the recipient that has discriminated, the Director may require either or both recipients to take remedial action [84.6(a)(2)].

The Director may require a recipient to take remedial action with respect to (1) disabled persons who are no longer participants in the recipient's program when such discrimination occurred, or (2) those who would have been participants had the discrimination not occurred [84.6(a)(3)].

5. Self-evaluation.

Within one year of the effective date, the recipient (with assistance from the disabled and other interested persons) is to: (a) evaluate its current policies, practices, and the effects thereof that do not or may not meet the requirements; (b) modify any noncompliant policies and practices; and (c) take appropriate remedial steps to eliminate the effects of any discrimination [84.6(c)(1)].

6. Grievance procedures and due process.

A recipient that employs fifteen or more persons is to
designate at least one person to coordinate its compliance efforts [84.7(a)]. Such recipients are also to adopt grievance procedures that incorporate due process standards and provide for prompt and equitable resolution of complaints [84.7(b)].

7. Notification.

A recipient that employs fifteen or more persons is to take appropriate initial (within 90 days) and continuing steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of handicap in admission or access to, or treatment or employment in, its programs and activities [84.8(a)]. Methods of notification may include the posting of notices, publication in newspapers and magazines, placement of notices in the recipient's publication, and distribution of memoranda or other written communications. The notice is to also identify the compliance coordinator.

Subpart C: Program Accessibility

1. Nondiscrimination.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any applicable program or activity [84.21].

2. Existing facilities.

A recipient is to operate each program or activity so
that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons [84.22(b)]. The recipient is not, however, required to make each of its existing facilities or part of a facility accessible and usable so long as the program "as a whole" is accessible.

A recipient may comply through: the redesign of equipment; reassignment of classes or other services to accessible buildings; assignment of aides; home visits; delivery of health, welfare, or other social services at alternate accessible sites; alteration of existing facilities and construction of new facilities; or any other such methods.

Structural changes in existing facilities are therefore not required where other methods are effective in achieving compliance. In choosing among alternatives, the recipient is to give priority to those methods that offer programs and activities to disabled persons in the "most integrated setting appropriate" [84.22(b)].

Recipients are to be in compliance within sixty days of the effective date (June 3, 1977) [84.22(d)]. Where structural changes are necessary, such changes shall be made within three years of the effective date (by June 3, 1980).

3. Transition plans.

In the event that structural changes are required, the recipient is to develop (within six months of the effective date) a transition plan [sec. 84.22(e)]. The plan is to:
(1) identify physical obstacles that limit accessibility, (2) describe the methods that will be used to make the facilities accessible, (3) specify the schedule for taking the necessary steps to achieve full program accessibility, and (4) indicate the person responsible for implementation.

4. Notice.

Recipients are to ensure interested persons can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by disabled persons [84.22(f)].

5. New construction.

Each facility, or part of a facility, constructed after the effective date (June 3, 1977) by, on behalf of, or for the use of a recipient shall be designed and constructed in such a manner that it is readily accessible to and usable by handicapped persons [84.23(b)]. The same standard applies to facility alteration, to the "maximum extent feasible."

The design, construction, or alteration of facilities are to be in conformance with ANSI standards [84.23(c)]. Departure from these requirements by the use of other methods is permitted when it is clearly evident that equivalent access to the facility or part of the facility is provided.

Subpart E: Postsecondary Education

1. Application.

Subpart E applies to postsecondary education programs and activities, including vocational education, that receive
or benefit from federal financial assistance for the operation of such programs or activities [84.41].

2. Admissions and recruitment.

Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient [84.21(a)].

In administering its admission policies, the recipient:
(1) may not apply limits upon the number or proportion of handicapped persons; (2) may not use any test or criterion that has a disproportionate, adverse effect on the disabled (unless it is a valid predictor of success and/or appropriate alternatives are unavailable); (3) shall select and administer tests so the results accurately reflect the person’s aptitude or achievement rather than the handicap, and that specially designed tests are offered as often and in as timely a manner as other tests; and (4) may not make preadmission inquiry as to whether an applicant is handicapped [84.42(b)(1-4)].

When a recipient is taking remedial or voluntary action to correct deficiencies, it may invite applicants to indicate whether and to what extent they are handicapped [84.2 (c)]. The recipient must state that the information is intended for use solely in connection with its corrective efforts and will be kept confidential, and that refusal to provide it will not subject the applicant to any adverse treatment [84.42(c)(1) and (2)].
A recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores [84.42(d)].


No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, extracurricular, or other postsecondary program or activity [84.43 (a)].

A recipient is to assure that its education programs or activities not wholly operated by that institution provide an equal opportunity for the participation of qualified disabled persons [84.43(b)]. Furthermore, programs and activities are to be operated in the most integrated setting appropriate [84.43(d)].

4. Academic adjustments.

Academic Requirements: A recipient is to make such modifications to its academic requirements as are necessary to ensure that those requirements do not discriminate (or have the effects of discriminating), on the basis of handicap, against a qualified applicant or student [84.44(a)].
Those requirements that can be demonstrated as essential to the program of instruction or to any directly related licensing requirement will not be regarded as discriminatory.

Academic modifications may include: changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which specific courses are conducted.

Academic Rules or Regulations: The recipient may not impose upon handicapped students other rules (such as the prohibition of tape recorders in classrooms or of guide dogs in campus buildings) that have the effect of limiting the participation of these students in educational programs or activities [84.44(b)].

Course Examinations: In its course examinations or other procedures for evaluating the academic achievement of students, the recipient is to provide such methods of evaluation as will best ensure that the results represent the student's achievement in the course, rather than the handicapping condition (except where such impaired skills are the factors that the test purports to measure) [84.44(c)].

Auxiliary Aids: A recipient is to 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 auxiliary aids [84.44(d)(1)].

Auxiliary aids may include: taped texts; interpreters or other methods of making orally delivered materials available to hearing impaired students (e.g., typed texts, film transcriptions, lecture notes); readers in libraries for those with visual impairments; classroom equipment adapted for use by students with manual impairments; and other similar services and actions [84.44(d)(2)].

5. Student services.

Housing: A recipient that provides housing to its non-disabled students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others [84.5(a)]. At the end of the transition period, such housing is to be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nondisabled students.

Furthermore, a recipient that assists any agency, organization, or person in making housing available to any of its students is to take whatever action is necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap [84.5(b)].

Financial Aid: In providing financial assistance to qualified handicapped persons, a recipient may not (1) on the basis of handicap, provide less assistance than is
provided to nondisabled persons, limit eligibility for assistance, or otherwise discriminate, or (2) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates on the basis of handicap [84.46(a)(1)].

The recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate (or have the effect of discriminating) on the basis of handicap only if the overall effect of the award is not discriminatory [84.46(a)(2)].

Employment Assistance: A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are available to qualified handicapped students [84.46(b)]. Likewise, a recipient that employs any of its students may not do so in a manner that discriminates on the basis of handicap [84.46(c)].

Physical Education and Athletics: In providing physical education courses, athletics, and similar programs and activities to any of its students, the recipient may not discriminate on the basis of handicap [84.47(a)(1)]. A recipient that offers physical education courses or that
operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

A recipient may offer separate or different programs and activities only if they are provided in the most integrated setting appropriate, and if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not different [84.47(a)(2)].

Counseling Services: A recipient that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap [84.47 (b)].

The recipient is to ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nondisabled students with similar interests and abilities [84.47(b)]. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

Social Organizations: A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such groups do not permit discrimination on the basis of handicap [84.47(c)].
Health Services and Insurance Programs: Any health service or insurance program than the recipient offers to its students must not discriminate on the basis of handicap [sec. 84.43(a)].

Transportation: Transportation services offered by an institution to its students (or through an outside provider that is assisted by the college) are to provide students with opportunities equal to the nondisabled [84.43 (a)].

Subpart G: Procedures (Interim)

Until DHEW issues a consolidated procedure for all the civil rights articles it administers, the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated with reference [sec. 86.71]. The following is a list of section 504 requirements and the deadlines for compliance.

Deadline Requirement

6/3/77...Compliance with specific requirements, including but not limited to:
(a) appointing a person(s) to coordinate efforts;
(b) adopting grievance procedures and due process standards;
(c) ensuring that new construction conforms to ANSI standards; and
(d) ensuring that auxiliary aids are available.

7/5/77......Submit to DHEW a written assurance pledging compliance [sec. 84.5].

8/2/77.....Programs and activities are to be accessible, with the exception of structural modifications that may be required [84.22(d)].

9/2/77.....Initial notifications regarding the institution's commitment to nondiscrimination [84.8].
12/2/77....Transition Plan for changes in facilities needed to achieve accessibility [84.22(e)].

6/3/80.....Facility modification to be completed in order to achieve physical accessibility.
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P.L. 74-271.....Social Security Act (8/14/35).


P.L. 90-538.....Handicapped Children's Early Education Assistance Act, 82 Stat. 901 (9/30/68).


P.L. 94-103...Developmentally Disabled Assistance and Bill of Rights Act, 89 Stat. 486 (10/4/75).

P.L. 94-142...Education for All Handicapped Children Act, 89 Stat. 773 (11/29/75).


P.L. 100-407...Technology-Related Assistance for Individuals with Disabilities Act, 102 Stat. 1044 (8/19/88).
