

Access To Schools

A Legal Guide To The Rights Of Public
School Students with Physical Disabilities





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Introduction

Disability Rights Advocates (DRA) is a nonprofit law firm dedicated to defending the civil rights of people with disabilities. DRA advocates on behalf of disabled students and their parents by providing information about the legal rights provided by state and federal laws, and by representing students with disabilities in court if litigation becomes necessary. Above all, DRA fights to make sure students with physical disabilities are given equal access to all educational opportunities provided by their public schools.

Our goal in writing this guide is to give basic information about the legal rights of students, parents and guardians with physical disabilities to equally access public schools. This guide gives a detailed description of the access rights granted to people with physical disabilities, including mobility and sensory impairments, and of the equal access rights to school districts' programs and facilities. Students with disabilities have these rights regardless of whether or not they are placed in special education programs.

School districts have legal obligations that are far greater than just providing special education programs. DRA works directly with school district officials to help them understand these legal obligations and to assist them in bringing schools into compliance. This guide will also help students, parents and guardians work directly with school district officials to get access to facilities, programs and opportunities needed in order to complete one's education successfully.

Know your rights: Students, parents and guardians need to know their legal rights to be strong advocates for full and equal access to education.

What We Cannot Do

DRA cannot help a disabled student, parent or guardian with issues under the Individuals with Disabilities Education Act (IDEA), or other California and federal laws that deal with special education obligations. DRA cannot help with individual issues about:

- Individual Education Plans (IEPs)
- Educational placements (special education or main streaming)
- Individual disciplinary matters
- Individual concerns regarding readers, tutors and other similar services

In most cases, unless a school district has a policy or systemic practice of discriminating against people with disabilities, DRA will not be able to assist in direct representation. However, this guidebook contains referrals to other agencies in our Resource Section at the back of this book.

This guidebook is not comprehensive. This guidebook is not, and cannot be, a substitute for legal advice from a competent attorney regarding a particular problem with a school district. This guide is only intended to be a general informational guide. If and when a disabled student, parent or guardian believes they have been discriminated against, they should always consult an attorney.

This guide is only accurate at the time of printing. Laws and design standards can change.



Chapter 1: A Summary of Legal Rights

Disabled students and their parents have certain rights that can be enforced under law. These rights include:

- The right to equal treatment
- The right to program access
- The right to be free from harassment, retaliation or intimidation
- The right to a safe physical environment
- The right to integration with students without disabilities
- The right to reasonable modification of policies, practices and/or procedures
- The right to a barrier-free environment
- The right to notice

This summary is only intended to highlight the key rights. More information is included in this guidebook about each legal right. If, after reading this guidebook, you do not understand how the law applies to a particular problem, you should call an attorney for assistance.

Rights of Parents or Guardians of Disabled Students:

Parents and guardians have the right to advocate on behalf of their disabled children, and to make specific requests for the removal of architectural barriers or for modifications of policies or procedures.

School districts may not retaliate against parents or guardians for demanding that districts respect the legal rights

of their disabled children. The right to be free from retaliation, intimidation and coercion extends to both the parent and guardian and to a disabled student.

The Right to Program Access:

A disabled student, parent or guardian has the right to participate in every program, service and activity offered by a school district. A disabled student, parent or guardian may not be excluded because of a disability.

"Program access" means that a disabled student, parent or guardian is entitled to all the benefits of the programs, services and activities that are provided by the school district. "Programs, services and activities" means all of the educational opportunities and other opportunities that are provided to those without disabilities by the school district. "Program access" includes, but is not limited to, special education services.

A partial list of a school district's "programs, services and activities" may include:

- summer school
- preschool programs
- employment offices and services
- college admissions programs, including the SAT
- exchange programs with other schools or countries
- remedial reading
- tutoring
- field trips
- adult education
- bilingual education programs

- athletic activities and events, including being a participant in athletic competition or being a spectator
- community meetings
- health services
- special magnet schools (including schools with specialized programs in the arts, sciences, technology, and languages)
- vocational and technical education programs (including automotive training, food services training and others)
- school clubs and societies (drama, yearbook, model UN and others)
- student unions (including ethnic, racial or religious organizations or groups)
- advanced placement classes
- technology classes or activities
- the California high school exit exam
- counseling services (including peer counseling)
- programs for pregnant teens
- drug and alcohol counseling
- programs associated with the California State University system
- graduation and awards ceremonies
- student government
- national honor societies
- alumnae associations
- recreational clubs and programs (including skiing and others)
- big brother/big sister programs
- high school proms and homecoming rallies
- scholarship programs and other information
- school assemblies
- field trips
- other group student activities and family activities



In most cases, a district's programs, services and activities are offered at every level from pre-school through adult education. Students with disabilities are entitled to program access at each stage of the educational process.

A school district may not exclude a disabled student, parent or guardian from participating in any of its programs, services and activities because they have a disability.

The school district may not require a disabled student, parent or guardian to pay for any cost resulting from providing program access.

School District Obligations:

Some school district officials may mistakenly believe that providing physical access or program access "on request" complies with state and federal law. This is not true. School districts are obligated to provide program access to a disabled student parent or guardian even before they make a specific request to use a particular program, service or activity. The school district may not make a disabled student, parent or guardian bear the burden of identifying what programs should be made accessible to them.

Under federal law, school districts are required to have a self-evaluation plan that identifies all of the district's programs, services and activities. Federal law also requires districts to prepare a transition plan that describes in detail how a school district's programs, services and activities will be made available to students with disabilities. This plan must include the removal of architectural barriers, and must state how and when the district will remove these architectural barriers. If a disabled student, parent or guardian asks to see a district's

self-evaluation and transition plan, the school district must let them see these plans.

Being Excluded from Programs or Having A Disabled Student's, Parent's or Guardian's Participation in Programs Limited Because of "SAFETY"

School district officials may claim that people with disabilities may not participate in a particular program, service or activity because of "liability" or "safety concerns." Similarly, school district officials sometimes claim that it is not possible for disabled people to participate in a program, service or activity in the same way as people without disabilities, or on an equal basis with students without disabilities, because of "safety reasons."

"Safety" is one of the traditional justifications for discrimination against people with disabilities. For this reason, both the law and the courts have recognized that a school district's claims regarding "safety" may often be an excuse for discrimination.

Under state and federal law, school districts may not require absolute certainty that others will face no risks as a result of a disabled person's disability. A disabled student, parent or guardian is not required to disprove every theoretical - or imaginary - possibility of harm to others. Instead, the school district must show that the risk of harm is significant and may not be eliminated by precautions or reasonable modifications.

If a school district excludes a disabled student, parent or guardian from participation, or limits their participation because of "safety," a disabled person has a right to know exactly why the school district thinks this is necessary. The

school district must make an individualized analysis of their situation and prove that their participation would be a direct threat to the health or safety of others.

To prove a "direct threat," the district must have strong evidence based on current medical knowledge or the best available objective evidence about:

- the nature, duration and severity of the risk
- the probability that injury will actually occur
- whether a reasonable modification in the district's policies would reduce or eliminate the risk

"Safety issues" have often been asserted by schools as an excuse to exclude students who are HIV positive, or as a reason to limit the participation of students with mobility impairments, in sports and other activities. The courts have often rejected these arguments by school district officials. Do not let stereotypes and assumptions about disability be used as an excuse to keep a disabled student, parent or guardian from participating in school programs.

The Right to Notice:

A district has a legal obligation to inform a disabled student, parent or guardian about their rights. Under Title II of the ADA, and Section 504 of the Rehabilitation Act of 1973, school districts have a legal duty to give a disabled student, parent or guardian information about federal law and how it applies to the district's programs, services and activities.



The Right to Equal Treatment:

A disabled student, parent or guardian has the right to not be discriminated against because of their disability. For example, no one - especially school district personnel - may use derogatory names like "cripple." No one may hit or harm or assault a disabled student or guardian because they have a disability. School district officials also have a legal duty to make sure that other people do not harass anyone because of a disability.

A disabled person has the right to be treated the same as everyone else. For example, a school district may not have a field trip solely for people without disabilities, nor can they stop a disabled person from going on a field trip because he or she is disabled. Generally, a school district may not have one set of conduct rules for people without disabilities, and use a different set of rules for people with disabilities.

A disabled person has the right to be free from stereotypical assumptions regarding their abilities and disabilities. Stereotypes and prejudices are a form of discrimination called "attitudinal barriers." For example, just because a student has a disability, a school official may not assume that he or she does not want to participate in honors academic programs, or in athletic or other activities. Sometimes individuals with disabilities are excluded from an activity because school district officials wrongly assume that they will not benefit from their participation. For example, it is wrong to exclude a blind student from a field trip to a flower garden because he may not see the flowers, or to exclude a deaf student from a field trip to the symphony because she cannot hear the music.

A disabled student has the right to get the same quality of educational programs, services and activities that are given to students without disabilities.

The Right to Be Free From Harassment, Retaliation or Intimidation:

A school district may not harass or punish a disabled student or their guardian because he or she has asserted their civil rights under state and federal law. For example, a school district may not suspend a disabled student from school, deny programs to a disabled student, or threaten them with disciplinary action because their parent or guardian complained about how the district was treating them. A school district may not harass a disabled student, parent or guardian because the district was asked to make something accessible.

This right also applies if a disabled student, parent or guardian has started legal proceedings against a school district for violating their civil rights.

The Right to a Safe Physical Environment:

A school district may not expose a disabled person to hazards or dangers that are not imposed on people without disabilities. It is illegal for a school district to expose disabled students to safety hazards. Safety hazards include steep ramps, paths or walkways that are hazardous to students who use wheelchairs or who have other physical disabilities.

An example of a safety hazard would be a path of travel that contained grates with large gaps (more than 2 inches), or

steep paths of travel with slopes such as one in eight or one in six. Steep cross-slopes on paths of travel may also be a safety hazard to disabled people. If a disabled student or parent or guardian's school contains these types of safety hazards, a disabled student, parent or guardian has a right to have the barriers removed promptly.

For people with visual impairments, there must be detectable warnings at crosswalks and other areas where there is vehicular traffic. School districts must provide visual alarms for people with hearing impairments.

Emergency Preparedness:

Every school district is required to have specific plans in case of emergencies such as fires, earthquakes and floods. These plans must include accommodations for people with disabilities.

These include the following:

- A school district must ensure that physically disabled students are provided with fire and earthquake safety programs.
- A school district must have visual and audio emergency warning devices.
- A school district must have fire doors and secure locations for mobility impaired people on all floors, and not just on the ground floor. The designated waiting areas must include some means of communication such as a direct line or telephone.



The Right to Integration with Students without Disabilities:

A school district may not force a disabled student to go to school in separate facilities that are physically isolated from the facilities where non-disabled students attend school. A disabled student has the right to go to school in the same place as students without disabilities. For example, school districts may not make students with disabilities go to school in separate buildings which are not on the regular school campus (or which are on the edge of the regular school campus), so that he or she is isolated from students without disabilities.

The Right to Reasonable Modification of Policies, Practices and/or Procedures:

A school district must make necessary changes in its facilities or how it operates its programs to help a disabled student, parent or guardian participate in school programs. For example, reasonable modification might include providing an aide to help a disabled student use school facilities. A disabled student, parent or guardian also has the right to refuse modifications that are not wanted or needed.

If modifications are requested, the school district has a legal duty to provide them. A disabled student does not have to pay for the cost of modifications. Some typical modifications include:

- additional time on examinations
- note takers
- readers
- providing keys to elevators so that a disabled student can use lifts and elevators without assistance

- modifications in policy (e.g. flexibility regarding graduation requirements, work schedules and other non-academic policies)
- assistance with utilizing facilities (if necessary because of a student's disability)
- the use of a tape recorder

In almost all cases, school districts will have an obligation to provide these sorts of reasonable modification. School districts may not be obligated to provide a modification if doing so would impose undue financial or administrative burdens on the district.

The Right to Refuse Modification and Separate Programs:

Disability civil rights laws protect a disabled student's independence and free choice. Just because a school district offers a reasonable modification does not mean that it has to be accepted. For example, a school district may offer a disabled student the modification of a separate room for course examinations. A disabled student has the right to refuse this modification.

A disabled student also has the right to refuse to participate in separate or different programs for students with disabilities. For example, a disabled student does not have to participate in special recreational programs for students with disabilities if they do not want to participate. Similarly, just because a school district has offered a disabled student the choice of participating in a separate or different recreational program for disabled students does not give the district the right to exclude them from participation in regular recreational programs.

The Right to a Barrier-Free Environment:

Students have a legal right to attend an accessible school. This means providing an environment that does not have physical barriers or obstacles that make it difficult or impossible for a person with a physical disability to use school buildings and facilities.

A school must have facilities that are fully accessible to people with physical disabilities, including people who use wheelchairs, at every level from pre-school through adult education.

The right to a barrier-free environment includes accessible:

- restrooms
- primary entrances to school facilities
- classrooms
- specialized classrooms, such as accessible science laboratories, computer laboratories and others
- athletic fields and facilities
- cafeterias and dining facilities
- auditoriums and public spaces
- parking spaces
- paths of travel from accessible parking spaces to an accessible
- primary entrance
- lever handle hardware on doors
- signage marking accessible facilities and paths of travel
- Braille signage
- visual alarm systems for people with hearing impairments
- clear paths of travel for people with visual impairments



- assistive listening systems for individuals with hearing impairment
- public telephones and drinking fountains

The purpose of this list is to help you understand that the right to a barrier-free environment is broad. This list is not meant to be exhaustive, and the right to a barrier-free environment includes many other facilities.

If a disabled student's school is inaccessible, he or she has the right to attend an accessible school. If there are no accessible schools, a disabled student has the right to prompt removal of architectural barriers. The school district is responsible for covering the cost of the removal of architectural barriers.

State law has required that all public school buildings built or renovated within the last 30 years must meet access requirement. For a building to be fully accessible, all of the following features must meet current access standards:

- building entrances
- paths of travel within the building including corridors
- elevators and doorways
- all areas throughout the building used for programs
- restrooms
- public telephones and drinking fountains
- parking areas and spaces including parking spaces for van parking. (A van accessible space has an access aisle that is at least 96 inches wide, and must be designated as "van accessible".)

All school facilities and buildings altered, renovated or remodeled must be made accessible in the areas where the



work was done. Buildings altered or renovated in the last 30 years must have the following access features:

1. Access to the altered area
2. At least one accessible primary entrance (and signs at the inaccessible entrances directing disabled people to the accessible entrance)
3. A path of travel to the altered area from the public side walk and each of the following:
 - bus stop
 - accessible restrooms that serve the altered area
 - accessible public telephones and drinking fountains that serve the altered area
 - accessible parking spaces that are close to the accessible building
 - entrance to the building

The Americans with Disabilities Act Accessibility Guidelines (ADAAG) define "alterations" as follows: An alteration is a change to a building or facility made by, on behalf of, or for the use of a public accommodation that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangements in the plan configuration of walls and full-height partitions. Normal maintenance, re-roofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility. (28 C.F.R. Pt. 36, App. A, §3.5.)

School districts have a legal duty to maintain accessible features in operable working condition. This means that ramps, doors, restrooms, elevators and other features must be operational on a daily basis. A school district may not allow these features to be non-operational for extended

periods of time (e.g. more than one week), although isolated or temporary interruptions in service or access are not illegal.

The state and federal design standards contain many other requirements. A disabled student guardian should get a copy of these standards to learn about other specific requirements.

The federal standards are contained in the Americans with Disabilities Act Accessibility Guidelines. (See: Section 28 C.F.R. Pt.36, Appendix A.) To order a copy, call the Architectural Transportation Barrier Compliance Board at **(800) 872-2253** or the Department of Justice at **(202) 514-0301**.

The California standards are published in Title 24 of the California Code of Regulations (CCR). To order a state copy, call the Division of the State Architect at **(916) 445-2163**.

Right to Accessible Websites:

School Districts must ensure that any internet websites owned or operated by the district or any school within the district must be accessible to people with disabilities. This means that all websites must comply with federal standards pursuant to the Rehabilitation Act Section 508 regulations on electronic and information technology.

Website Accessibility includes:

- Using Alt text tags describing graphics used on a website that conveys information
- Accessible links and image maps detectable by a screen reader
- Accessible navigation features such as headings detectable by a screen reader

- Providing transcripts of any audio material on a website
- Insuring that all functions of the website may be done using key boards
- Insuring that all documents downloadable from such a website are accessible text files or searchable PDF's

Rights of Students with Hearing Impairments:

- Students with hearing impairments have the right to qualified and effective interpreter services. This right applies whenever students with hearing impairments need a qualified interpreter to have access to school programs, services and activities.
- Students with hearing impairments have a legal right to bring their service dog (or other service animal) to school.
- Students with hearing impairments have the right to reasonable modifications and auxiliary aids that are necessary for them to participate in school programs, services and activities. Auxiliary aids and services include:
 - o Qualified interpreters
 - o Note takers
 - o Transcription services
 - o Real-time captioning
 - o Written materials
 - o Telephone handset amplifiers
 - o Assistive listening systems and devices
 - o Closed caption decoders
 - o Open and closed captioning
 - o Telecommunications devices for deaf or hard of hearing persons (TDD's or also called TTY
 - o Videotext displays
 - o Other effective methods of making aurally delivered materials available to individuals with hearing impairments

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- Students with hearing impairments have the right to qualified and effective interpreter services. This right applies whenever students with hearing impairments need a qualified interpreter to have access to school programs, services and activities.

- o Assistive listening systems and devices
 - o Closed caption decoders
 - o Open and closed captioning
 - o Telecommunications devices for deaf or hard of hearing persons (TDD's or also called TTY)
 - o Videotext displays
 - o Other effective methods of making aurally delivered materials available to individuals with hearing impairments
- Students with hearing impairments have the right to a barrier-free environment, including visual alarm systems for fire and earthquake safety.

Rights of Students with Visual Impairments:

- Students with visual impairments have a right to a barrier-free environment. For people with visual impairments, this includes audible signals for crosswalk areas near and within school district facilities.
- Students with visual impairments have the right to accessible signage, including large print or Braille maps of school buildings. School campuses and facilities must not contain any unmarked obstacles that would be a potential hazard to students with visual impairments.
- Students with visual impairments have a legal right to bring their guide dog (or other service animal) to school.
- Students with visual impairments are entitled to accessible educational materials. School districts must provide course materials in an accessible format, whether large print, taped texts, audio recordings, Braille or electronic format. School districts must provide students with visual impairments accessible educational materials such as text books at the same time that they give those materials to their non-visually disabled students.

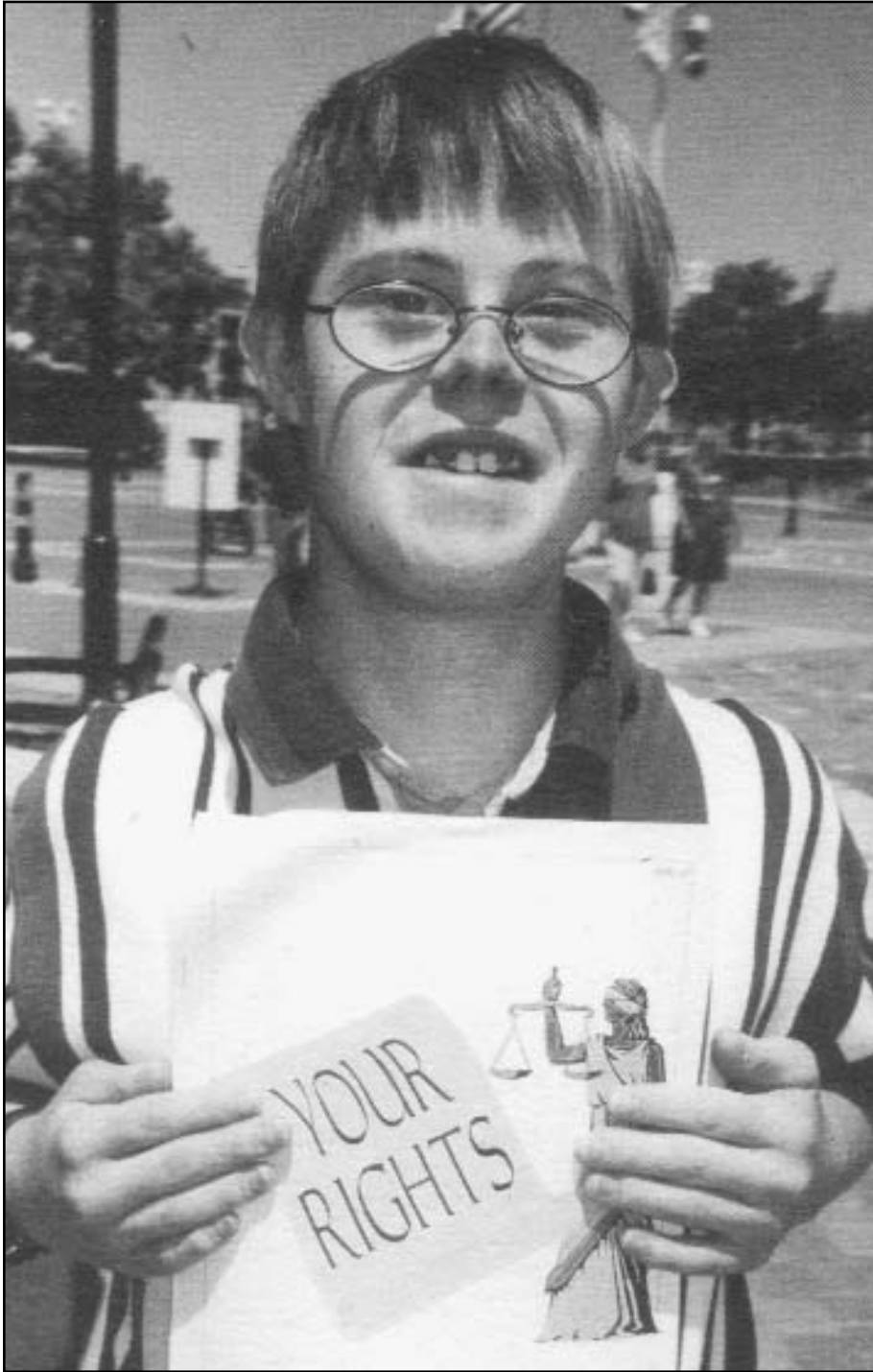
- Students with visual impairments have a right to auxiliary aids or services. This includes qualified readers and scribes, screen-access software for computers, and note takers if a student with a visual impairment requests them.
- Students with visual impairments have the right to any reasonable modifications that are necessary to help them learn or participate in school. Students with visual impairments also have the legal right to program access.

Rights of Parents or Guardians with Disabilities:

Disabled parents and guardians have the same rights as those without disabilities to participate in all school programs, services and activities. For example, disabled guardians have the right to participate in parent-teacher conferences, field trips, parent or guardian-teacher associations, and graduation ceremonies.

School districts have a legal duty to make all reasonable modifications of policies, practices and/or procedures, including the removal of architectural barriers, which are necessary for disabled parents and guardians to participate in their children's educations.

Parents or guardians with visual impairments are entitled to reasonable modifications that allow them to participate in their children's educational programs on the same basis as parent or guardians without disabilities.



Deaf or hearing impaired parents have the right to participate in all school programs, services and activities that are provided to hearing parent or guardians. For example, if a deaf parent wants to participate in a parent-teacher conference, the school district is obligated to provide an interpreter or assistive listening device if one is requested.

Parents or guardians with hearing impairments have rights under state and federal law, and school districts have an independent legal duty to respect these rights.

"Program Access" - Important Exception to the Right to a Barrier-Free Environment:

If it is possible for disabled people to get the same benefits as non-disabled people from the district's programs, services and activities without making every part of every building fully accessible, the school district does not have to provide a totally barrier-free environment.

Exception for Historic Buildings:

In general, alterations to historic buildings must comply with current accessibility standards unless providing full access would threaten or destroy the historic significance of the building. If historic features would be destroyed, alternatives must be provided that give equivalent access. A qualified historic building is a building that is listed in the National Register of Historic Places or that is designated as historic under an appropriate state or local law. If a disabled student or parent or guardian has a question about whether a school district is entitled to use this exception, a disabled student or parent or guardian should contact an attorney.



Chapter 2: What is "Accessible"?

"Accessible" means that a disabled person can use a facility without unwanted and unnecessary assistance. For example, an "accessible" ramp is a ramp that a wheelchair user can push himself or herself up without unwanted help from another person. "Accessible" means independence. A school building is not accessible if it can only be used with "help" from another person.

Being pushed, carried or lifted into a facility does not make the facility "accessible." Unfortunately, many school officials believe that unwanted and unnecessary "help" makes a school and its facilities "accessible." This is wrong. Wheelchair lifts, elevators or restrooms are not readily "accessible" if a disabled student or parent or guardian is forced to ask for a key in order to use them. School districts have a legal duty to give disabled students keys to lifts, elevators or restrooms so that a disabled person can use accessible facilities independently. Alternatively, school districts may keep these facilities unlocked.

Because of their disabilities, some people may need assistance to use a facility. The district may not refuse to provide such assistance in situations where a disabled person has requested the assistance of an attendant or another person to be able to use school facilities. This type of assistance is a "reasonable modification." Just because a school district has made its facilities fully compliant with state and federal design standards, does not mean that the district may refuse to provide assistance to disabled students who need it.

A disabled student, parent or guardian has a legal right to facilities that meet state and federal design standards.

Physical accessibility is defined by state and federal design standards. Any facility that does not comply with the specific requirements of these standards is not fully accessible. School district officials, however, sometimes mistakenly claim that any facility that can be used by a person with a disability is "accessible." This is wrong.

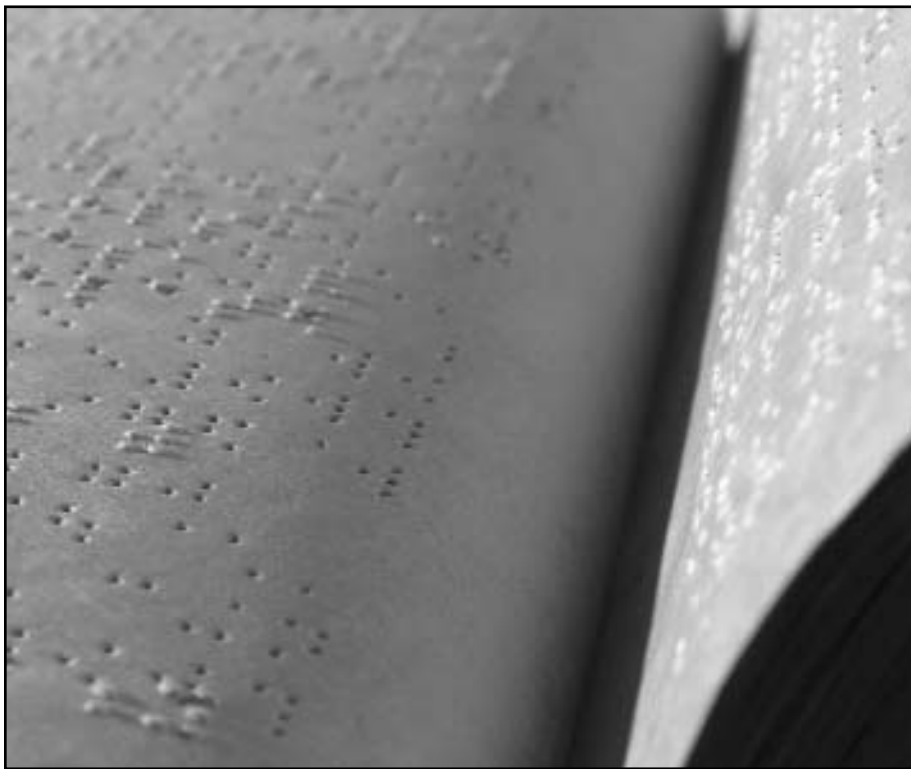
School district officials also sometimes claim that they have obtained permission from state or local officials to keep a building inaccessible, or that they have permission not to provide access as required by state and federal design codes. School district officials who make these claims are usually mistaken. Local and state officials do not have the legal authority to excuse compliance with federal laws such as the ADA and Section 504.



Some of the Most Basic Access Requirements are:

- Accessible parking, an accessible path of travel from the public way, and signage directing a disabled student or parent or guardian to accessible entrances
- Ramps must have a running slope that is no steeper than 8.33% or one inch of vertical rise for every foot of horizontal length
- Ramps should not have a cross slope that exceeds 2% or one inch for every 50 feet
- Ramps that have a vertical rise of more than 6 inches must have handrails on both sides
- Ramps and landings with drop-offs must have curbs or railings that prevent people from slipping off the ramp
- Ramps must have level landings at the bottom and the top of the ramp
- Ramp landings must be at least 60 inches long and 60 inches wide
- Ramps must have a landing for every 30 inches of vertical rise (i.e. every thirty feet there must be a landing)
- Outdoor ramps must be designed so that water does not accumulate on ramp surfaces
- Curb ramps must be 48 inches wide
- Doorways must have a minimum clear opening of 32 inches
- Doors must have lever handle hardware (no knobs)
- Minimum space between two doors in a series must be 48 inches plus the width of any door swinging into the space
- Paths of travel must be at least 32 inches wide, and should be 36 inches wide in most places
- Paths of travel surface must be stable, firm and slip-resistant
- Gratings in the path of travel must not have gaps that are more than 1/2 inch wide

- Changes in level that exceed 1/2 inch must be ramped
- Accessible restroom stalls must have a 60 inch turning radius for a person using a wheelchair
- Accessible restrooms must contain accessible sinks, and lowered mirrors and towel dispensers
- Toilets must be between 17 to 19 inches in height from the floor
- Toilets must have grab bars as required by law
- Hot water pipes and drain pipes under sinks must be insulated
- No sharp or abrasive surfaces under sinks
- Faucets must generally have lever handles
- Seating areas must have clear floor spaces for individuals who use wheelchairs



- Wheelchair seating areas must provide companion seating, and must provide comparable sight lines to those for person without disabilities
- Accessible drinking fountains and telephones
- Playground surfaces must be firm, stable and slip resistant
- Playgrounds should include accessible play structures

For People with Visual Impairments:

- Walkways, halls, corridors and other circulation spaces must provide a minimum clear head room of 80 inches
- Objects projecting from walls must protrude no more than 4 inches into walks, halls, corridors and other spaces
- Elevators must have audible signals
- Elevator controls must have tactile, Braille and visual control indicators
- Audible alarms must be provided in restrooms, hallways, lobbies, and any other areas of common use
- Detectable warnings must be provided at stairs, hazardous vehicular areas, and reflecting pools
- Signs regarding accessible facilities must be provided in raised and Braille characters

For People with Hearing Impairments:

- Visual alarms must also be provided in restrooms, hallways, lobbies, and any other areas of common use
- Volume control telephones and text telephones must be provided
- Assembly areas must have assistive listening systems



How to get a copy of the federal and state design standards:

The state and federal design standards contain many other requirements. A disabled student guardian should get a copy of these standards to learn about other specific requirements.

Federal standards are contained in the Americans with Disabilities Act Accessibility Guidelines. (See: Section 28 C.F.R. Pt.36, Appendix A.) To order a copy, call the Architectural Transportation Barrier Compliance Board at (800) 872-2253 or the Department of Justice at (800) 514-0301 x 7.

California standards are published in Title 24 of the California Code of Regulations (CCR). To order a copy, call the Division of the State Architect at (916) 445-8100

You can find the full text of these statutes and regulations at public law libraries. To find the law library in your county, look in the government listings of the phone book or go to www.cccll.org/cccll-cll.htm

Chapter 3: Laws and Definitions of Disability

Laws Addressing the Rights of Public School Students with Physical Disabilities:

The legal right to equal access is guaranteed by several California and federal laws. These laws include:

- Americans with Disabilities Act of 1990 (ADA)
- Section 504 of the Rehabilitation Act of 1973
- Individuals with Disabilities Education Act (IDEA)
- Unruh Civil Rights Act, California Civil Code 51
- California Disabled Persons Act, California Civil Code §54
- California Government Code §11135 et seq.
- California Government Code §4450, et seq.

For a description of each of these laws and how they apply to students with disabilities, please see Appendix A. You can find the full text of these statutes and regulations at public law libraries. To find the law library in your county, look in the government listings of the phone book or go to www.cccll.org/cccll-cll.htm

Is a disabled student or guardian's disability covered by these laws? Who is "physically disabled" under state and federal law?

State and federal law differ on the definition of disability. In general California state laws are broader in coverage than federal laws. Whether a law protects a disabled student, parent or guardian depends on whether he or she is disabled under that law. Please see Appendix B for more information about coverage under federal or state laws.

Chapter 4: Tips for Asserting Your Rights

The following are tips on how to effectively advocate for your rights:

1. Communicate to the district in writing. Write letters to the school district stating what you need. By making written demands you are able to keep a permanent record of your formal requests to the school district. The district then has a legal duty to respond to the written request. Chapter 7 contains some sample letters that may be adapted to meet your needs.
2. Keep copies of all written correspondence with a school district. Each letter sent to or received from the district, is a valuable piece of evidence in any legal action may be brought against the district in the future. You should also keep detailed notes of everything that happens with regard to any problem with the district.
3. Bring witnesses to meetings with school district officials. Bringing a witness serves several purposes. First, a witness can confirm what actually happened - and what was said - at the meeting. This increases your credibility in subsequent court proceedings. Second, a witness will strengthen your position at the meeting by letting the district know that you are not alone, and that you are taking your rights seriously.
4. Send confirming letters about any agreements or promises made by school officials at meetings. If school district officials or personnel make promises to you about barrier removal, reasonable modifications or any of your rights under state and federal law, send a letter after the

meeting confirming your understanding of what the school officials promised. This minimizes the risk of misunderstanding or confusion.

5. Go to the top. When requesting the removal of architectural barriers, safety hazards, or the provision of reasonable modifications, write a letter directly to the superintendent of schools and send a copy of this letter to the chief officer of the school board. These officials have a legal duty to make sure that the district complies with state and federal law. By sending a letter to these officials, you will put the district on legal notice of your request, and you will also get the attention of the officials who have the power to address your needs and concerns.

6. Go through proper grievance procedures. All public entities are required by the ADA and Section 504 of the Rehabilitation Act to have a compliance officer, whose job it is to mediate complaints and to ensure compliance by the ADA. They are also required to have a Grievance Procedure that a person should be able to get a copy of if they wish to file a disability discrimination complaint. The procedure should indicate the timelines of when the school has to reply, and what your appeal rights are if you are not satisfied with the result. Contact the ADA compliance officer for the school district to find out how to file a disability-related complaint. You should try to comply with internal district procedures even though this is not required under the law. This will better position you if further action is required.

7. Use proper procedures and be polite. Your credibility is always greater when you follow the rules and use common courtesy. Do not be rude to school officials even if they are behaving outrageously and you are upset by their conduct.

Instead, stay calm and insist on your rights. If they are unwilling to respect your rights, then make notes of what happened, get the names, addresses and telephone numbers of any witnesses, and write a letter to the district protesting its conduct.

8. You do not have to settle for less than what you are guaranteed by law. Don't be intimidated. School district officials may make you feel that you are being unreasonable, or that your child is not entitled to the same educational opportunities as everyone else. Know your rights, know what you want, ask for it in writing, and then insist on receiving it. Remember, you do not have to settle for less access and less opportunities than people without disabilities.

9. Work with other disabled students and/or parents to get more information and to put more political pressure on the district. Find other disabled students and parents who are being denied their rights by the school district. Find out about their situations, and their interactions with school district officials. They may let you know who among the school district's officials, if any, are responsive to the civil rights of people with disabilities. Sending a joint letter, or filing suit as a class action, will increase your power to make the school district give you or your child the accessibility and educational opportunities that is deserved.



Chapter 5: Getting Legal Help

When to Get an Attorney:

Many school districts may refuse to comply with state and federal law even when school officials receive written requests. When a school district has repeatedly refused to remove architectural barriers or to comply with its other legal obligations, and you or your child are unable to participate in school programs, services or activities because of the district's noncompliance, you should contact an attorney.

In most cases, you should not retain an attorney unless the school district has engaged in a significant violation of your or your child's rights. A significant violation can involve physical injury, mental distress or exclusion from educational opportunities. Courts do not approve of lawsuits that involve only minimal injuries, or that are merely about "principle" unless there is a substantial violation of the law. Some examples of significant injury include being denied access to school programs, not being provided with an accessible restroom, denial of requests for modifications and auxiliary aids or services, or intentional discriminatory treatment. Good attorneys will be hesitant to take cases that do not involve significant injury.

On the other hand, where a disabled person is suffering significant injury because of a school district's illegal conduct, you should immediately contact an attorney. The sooner you contact an attorney and begin legal proceedings, the sooner the school district will be forced to comply with the law.

You do not necessarily need to go to your school district's special education officers and use the special education



procedures before filing suit in court. If you or your child has been denied your rights to a barrier-free environment, program accessibility, or you or your child have been subjected to discrimination, you can go directly to court. The advantage of going directly to court is that state and local special education procedures are often ineffective and time-consuming. In some cases these procedures may not protect you and your child's rights.

Statute of Limitations:

If you do not assert your legal rights promptly, you may jeopardize the viability of your legal claims against the school district. Most laws have what is called a "statute of limitations." This means that you must file suit within a limited period of time after the district has violated your legal rights. Some statutes of limitations for civil rights violation by school districts are as short as one year or even six months. So, if a school district discriminates against you or your child, in most cases you should act promptly by submitting a claim. Some violations of the law are considered to be "ongoing." These are violations that recur each day because of the district's conduct. For example, an inaccessible restroom violates a disabled person's rights each time they use it. To provide another example, a refusal to provide modifications to a disabled student's disability violates their rights each time they need accommodations and do not receive accommodations.

You should always contact an attorney after your rights have been violated to find out whether you have a statute of limitations problem.

What to Expect If You Go to Court - Realistic Expectations:

The court system moves very slowly. Although in some emergency situations it is possible to get fast help from the courts through a motion for preliminary injunction or temporary restraining order, these circumstances are rare. The courts have more cases than they may handle efficiently, so it is often several months before a judge is even aware that you have filed suit. Getting a trial date may take up to three years or more. Fortunately, most cases settle out of court.

Filing an actual lawsuit is usually enough to pressure a school district into respecting your rights, and after some negotiation by competent attorneys, you can usually expect to get a satisfactory result even if it's not everything you wanted.

In the unlikely event that a case goes to trial, many judges will be sympathetic to legitimate claims by disabled students, and will order school districts to take reasonable measures to bring their facilities into compliance. However, judges are inherently cautious in their approach to social problems, and they do not like to turn the world upside down. They are unlikely to order school districts to undertake multimillion dollar architectural renovations unless there are strong reasons for doing so.

State and federal disability civil rights laws allow disabled people to get money damages against school districts that break the law. However, if you do go to court seeking money damages, do not expect a large damages award. Contrary to popular myth, judges and juries are reluctant to make large monetary awards, and they will only do so in clearly meritorious cases where the claimant has suffered severe injuries. Severe injuries might include exclusion from

educational programs for an extended period of time, segregation from students without disabilities, physical injuries resulting from inaccessibility, and emotional and mental distress caused by discrimination.

Working With Your Attorney:

You have the right to decide whether you want to settle. You also have the right to decide what terms you will accept as settlement of your legal claims. This is true for both injunctive relief - what the school district has to do to comply with the law - and money damages. However, you should also remember to use common sense, and you should follow your attorney's advice about settlement if she or he explains to you why the proposed settlement is a good deal, and what could be lost if you reject settlement.

A good attorney will protect your rights, keep your case moving, and keep you informed of major events in your case. You should communicate with your attorney as often as necessary, more frequently when something important is happening such as a motion, intensive settlement negotiations, or a trial.

You should follow your attorney's advice about your relationship with the school district and how you should treat school district officials. You should respect your attorney's professional judgment about how best to present your case. You can always fire your attorney at any time if you are dissatisfied with his/her performance. You should be aware that there may be substantial disadvantages to firing your attorney. Among other things, you will have to get another attorney (which may be difficult). Also, the resolution of your

case will most likely be delayed while you switch from one attorney to another.

Be aware that these state and federal statutes contain "fee shifting provisions." These provisions allow your attorney to recover your reasonable attorney's fees from the school district if you prevail in your lawsuit either at trial or through settlement.



Chapter 6: The California High School Exit Exam

Since 2002 California public schools have administered the California High School Exit Exam to high school students beginning in their sophomore year of high school. The exam consists of two sections—a mathematics section and an English and language arts section. In order to pass, students must receive a score of 350 or higher on each of the two sections of the exam.

All students including students with disabilities must take the CAHSEE. However, students with disabilities are permitted to have "variations," "accommodations" and "modifications" on the exam under certain circumstances.

A variation on the exam is permitted if students receive such variations regularly in the classroom. These include

- Additional time on the exam on the same day it is given
- Taking the exam in a separate room
- Using a magnifying device or audio amplification device
- Having a noise buffer such as a study enclosure
- Using special lighting, acoustics, or furniture
- Using colored overlays or other means to maintain visual attention
- Using American Sign language for directions
- Writing within the test booklet

Accommodations may be given if they are specified in the student's IEP or Section 504 plan. Accommodations do not affect the scoring of the exam and include:

- Large print or Braille versions of the exam
- Taking the exam over several days

- Having supervised breaks within a section of the exam
- Taking the exam at a certain time of day
- Marking answers in the test booklet directly, for later transfer by a school official
- Having the test administered home or in a hospital
- Using a scribe for multiple-choice questions
- Using a scribe for essays, only if the student provides spelling, grammar, and language conventions.
- Using a word-processor with the spelling and grammar check turned off
- Using assistive devices that do not interfere with the student's independent work
- Reading questions aloud in person or in a recording (on the Math Section Only)
- Using American Sign Language to present test questions (on the Math Section Only)

Modifications may be given if they are specified in the student's IEP. They are different from accommodations in that the California Department of Education has asserted they alter the nature of the material being tested. They include:

- The use of a calculator on the math section of the exam
- The use of a word-processor with spelling and grammar check on the English and Language Arts section of the exam
- Having English and Language Arts questions read in person or in a recording
- Use of American Sign Language on the English and Language Arts section
- Use of a scribe for essay questions where the scribe provides spelling, grammar and language conventions
- The use of assistive devices that interfere with independent work

The use of a modification invalidates the student's score on the exam. However, if a student is able to pass one or both sections of the CAHSEE with the use of one or more modification(s), they are eligible to receive a waiver from their local school board. Disabled students and their parents should request in writing to their high school principal to apply for a waiver on behalf of the student who passed the CAHSEE with the use of modifications. You can find an example of such a letter in Chapter 7. If the principal refuses to apply, or if the school board refuses to grant the student a waiver, the student should contact DRA, or another attorney for assistance.

For more information on the CAHSEE contact:

California Department of Education:
1430 N Street
Sacramento, CA 95814
(916) 319-0800
www.cde.ca.gov/ta/tg/hs/



Chapter 7: Sample Letters

It best to communicate and make requests to your school district in writing by making these written demands, you are creating a permanent record. The school district has a legal obligation to respond to your written request

This section contains sample letters. These draft letters are only intended as guides. Be sure to modify your a letter that specifically states your concerns, and which makes a specific request for assistance from the school district. If you have questions about what to write in your letter, you should speak with an attorney.

It is always a good idea to keeps copies of all of the letters that you write to the school district.



Sample Letter 1: Request for Barrier Removal

Dear Superintendent:

My daughter is currently enrolled at Smith Junior High School. As you know, my daughter has a spinal cord injury, and she uses a wheelchair for mobility. There are several architectural barriers at Smith Junior High which are causing my daughter some serious difficulties. These barriers include, but are not limited to the following:

1. There is no accessible route into the cafeteria. As a result, my daughter cannot eat lunch with her friends in the cafeteria.
2. There are several very steep paths at Smith that are very difficult for my daughter to climb. Some days she comes home from school with sore arms and pain in her shoulders and elbows from trying to push her wheelchair on these paths.
3. The restroom on the main classroom floor does not have a wide enough stall for my daughter to use the restroom in privacy. She complains about this a lot because it is humiliating for her.
4. My daughter cannot use the swimming pool at Smith because there is no ramp into the pool area.

Please consider this a formal request that the District remove these barriers, and provide access to Smith Junior High School. I make this request under Title II of the Americans with Disabilities Act of 1990, Section 504 of the

I have complained about these problems on several occasions, but the district has not taken any steps to resolve the situation. These conditions are not acceptable, and are severely limiting my daughter's ability to participate in school. If you do not respond to this request in writing within seven business days, I will, regrettably, be forced to pursue my daughter's legal remedies.

Sincerely,

Concerned Parent or guardian

cc: President of the School Board



Sample Letter 2: Request for Reasonable Modifications

Dear Superintendent:

My son is a sophomore at Jones High School. He has a visual impairment. I am writing to request a reasonable modification for his disability. My son needs large print copies of her textbooks, and he also needs readers so that he can keep up with her classes. Right now, Jones High School has not provided any large print textbooks, and Jones High has also failed to provide a sufficient number of readers. As a result of these problems, my son is falling behind in his classes because he cannot complete his reading assignments on time. This is -understandably - making him very upset. I'm sure you appreciate our predicament.

I believe the best way to fix these problems would be for the school district to hire enough readers to make sure that my son can complete his assignments on time. Second, the district should get large print versions of his texts as soon as possible. Please treat this as a formal request for modifications under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Unruh Civil Rights Act. As you know, this is a longstanding problem, and the district has failed to take the necessary corrective actions despite repeated complaints on my part. If I do not receive your affirmative response within seven business days, I will be forced to pursue legal remedies.

Very truly yours,

Concerned Parent or guardian

cc: President of the School Board

Sample Letter 3: From a Disabled Parent or Guardian

Dear Superintendent:

My child is currently enrolled at Edison Elementary School. I am deaf. I am writing because I want to participate in parent-teacher conferences about my son/daughter and his progress in school. I will need an interpreter to be able to communicate with the teacher, and with other school personnel. Also, I have noticed that Edison Elementary School does not currently have a TDD or TTY so that I can communicate with school personnel by telephone. Obviously, this concerns me because I must be able to communicate with school personnel if there is some problem or emergency. I believe you will find that interpreter services and appropriate TDD equipment can be made available at little expense to the school district.

Please treat this letter as a formal request for reasonable modifications and program access under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act. If I do not receive your affirmative response within seven business days-including a specific date whereby you will make the necessary accommodations-I will be forced to pursue my legal remedies.

Sincerely,

Concerned Parent or guardian

cc: President of the School Board

Sample Letter 4: California High School Exit Exam

Dear Principal,

I am writing to request that my child receive a waiver on the math section of the California High School Exit Exam (CAHSEE). My child is a student with a disability who has taken the Math section of the CAHSEE with modifications which affect my child's score on the exam. My child received a score of 353 on the Math Section with the modifications.

I request that the district waive the CAHSEE requirement in accordance with California Education Code §60851(c)(1).

Please provide me with a copy of my child's waiver petition that you will be sending to the school board as soon as possible.

Sincerely,

Concerned parent or guardian
CC: School Board President

Sample Letter 5: Requesting an Exemption from the California High School Exit Exam

Dear Principal

I am writing to request that I receive an exemption from the High School Exit exam (CAHSEE) graduation requirement under California Education Code §60852.3(a)(1-7). I am a student with a disability in the class of 2006. I have had an IEP since March of 2004. I have taken the CAHSEE twice-once in the spring of 2005, and again in the fall of 2005. The last time I took the exam I used all of the accommodations and modifications listed in my IEP. I have taken the remedial courses offered by the school beginning in the fall of 2005. Though I passed the Math section of the CAHSEE, I have not passed the English and Language Arts section. My latest scores are attached to this letter. Except for the CAHSEE requirement, I expect to complete all other state and local graduation requirements at the end of this semester.

I am 18 years old. I acknowledge that I am entitled to a free and appropriate public education until I am 22 or until I receive a diploma.

Please confirm as soon as possible that I will receive an exemption from the CAHSEE graduation requirement.

Sincerely,

Concerned Student

CC: School Board President,

Glossary of Terms

Accommodations: Provisions made to meet the specific needs of a person with a disability.

Americans with Disabilities Act (ADA): Federal law which prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. The ADA also establishes requirements for telecommunications relay services.

Auxiliary Aids: Aids provided to a person with disabilities in order to place them an equal opportunity to utilize services. Auxiliary aids may include brailed and taped material, interpreters, and other aids for individuals with disabilities.

California Disabled Persons Act (DPA): California law which guarantees full and equal access for people with disabilities to all public places.

Detectable warnings: A distinctive surface pattern of domes detectable by cane or underfoot, intended to alert pedestrians who are visually impaired to the presence of a hazard in the line of travel.

Due Process: The idea that laws and legal proceedings must be fair. Because all students with disabilities enjoy a protected property interest in public education, they are entitled to procedural due process protections under the Fourteenth Amendment in any discipline related matter that results in the denial of access to education.

Individuals with Disabilities Education Act (IDEA): Federal law that guarantees all children with disabilities access to a free and appropriate public education.

Modifications: Alterations or adjustments made to accommodate the needs of persons with disabilities.

Program Access: A disabled student or parent or guardian is entitled to all of the benefits of the programs, services and activities including all of the opportunities that are provided to students without disabilities, parents, guardians and community members by the school district.

Section 504 of the Rehabilitation Act: Prohibits discrimination by federal agencies against persons with disabilities or exclusion from activities or benefits solely based the person's disability

Statute of Limitations: The deadline to file a legal suit. You must file suit within a designated time period therefore it is important that you consult with a lawyer as soon as possible after you feel there has been a violation of your rights. If you do not file suit within this time period any valid claims that you may have against a school district may automatically be rejected by the court system. Deadlines will vary depending upon the type of violation.

TDD (Telecommunication Devices for the Deaf): Telecommunications systems used to communicate with individuals with impaired hearing or speech. This is also known as TTY (text telephone).

Title II (of the Americans with Disabilities Act): Federal law which prohibits the exclusion of persons with disabilities from

participation in the services, programs, or activities of publicly funded organizations.

Unruh Civil Rights Act: California law which prohibits discrimination on the part of any business. All persons are entitled to full and equal access no matter what their sex, race, color, religion, ancestry, national origin or disability.



Individuals with Disabilities Education Act (IDEA) and Individual Education Plan (IEP) Resources.

The Individuals with Disabilities Education Act(IDEA) is federal law granting children with disabilities the right to receive a free and appropriate public education. IDEA governs how states and school districts provide special education and related services to students with disabilities. IDEA requires that an Individual Education Plan (IEP) is developed for every student receiving special education.

DRA is unable to offer assistance with IEP concerns. However, there are several agencies with resource materials that may provide you with the information that you need. These organizations have excellent special education resource guides available for parents which clearly explain parents' and students' rights concerning IEPs, 504s, and due process. These organizations also have parent advocates on staff who may be able to assist you with your child's special education issues. These services are either free or low cost. Inside California, we refer you to the following:

Protection and Advocacy, Inc.
800-776-5746

Disability Rights, Education and Defense Fund (DREDF)
510-644-2555

Community Alliance for Special Education (CASE)
415-431-2285

West Regional Center Matrix Parent Network and Resource Center
415-884-3535

In addition, we recommend obtaining copies of the following key documents:

9th Edition Rights and Responsibilities Handbook

by CASE and Protection and Advocacy

This can be ordered by calling either organization.

Parent IEP Packet

by DREDF

This can be ordered by contacting DREDF.

NICHCY IEP Packet

This can be ordered by calling 800-695-0285 or emailing nichcy@aed.org.

California Special Education Programs - A Composite of Laws.

This document is available on the web, or you may call the California Department of Education at 800-926-0648.

Community Resources:

California Council of the Blind

7414 Mooncrest Way
Sacramento, CA 95831
Tel: (800) 221-6359
Web: www.ccbnet.org/

California Center for Law and the Deaf (CalCLAD)

14895 E. 14th Street, Suite 220
San Leandro, CA 94578
Tel: (877) DEAF LAW [332-3529] Toll free
Tel: (510) 483-0922 (Voice & TTY)
Fax: (510) 483-0967 (Fax)
Web: www.deaflaw.org

Chinese Parents Association for the Disabled

PO Box 2884
San Gabriel, CA 91778
Tel: (626) 307-3837
(Answering Service in Chinese)
E-mail: cpad@jackstorm.net
Web: www.cpad.org

Community Alliance for Special Education (CASE)

1500 Howard Street
San Francisco, CA 94103
Tel: (415) 431-2285
Fax: (415) 431-2289
Email: info@caseadvocacy.org
Web: www.caseadvocacy.org

Deaf Counseling, Advocacy and Referral Agency (DCARA)

14895 East 14th Street, Suite 200

San Leandro, CA 94578-2926

Tel: (510) 483-0753

TTY: (510) 483-6914

Fax: (510) 483-1790

Web: www.dcara.org

DCARA's Parent Resources (Parent Connections):

Tel: (510) 351-6748

TTY : (510) 351-6748

Ans. Serv.: (877) 322-7299

Web: <http://www.parentlinks.org>

Disability Rights Advocates (DRA)

2001 Center Street, 3rd Floor

Berkeley, CA 94704

Tel: (510) 665-8644

TTY: (510) 665-8617

Fax: (510) 665-8511

Web: www.drlegal.org

Disability Rights Education and Defense Fund (DREDF)

2212 6th Street

Berkeley, Ca 94710

Voice: (510) 644-2555

Toll free: (800) 348-4232

TTY: (510) 644-2555

Fax: (510) 841-8645

Web: www.dredf.org

**Disability Rights Legal Center
(formerly Western Law Center for Disability Rights)**

919 Albany Street

Los Angeles, CA 90015

Tel: (213) 736-1334

TDD: (213) 736-8310 (TDD).

Fax : (213) 736-1428

Education Advocacy Project: (213) 736-1031

Web: www.disabilityrightslegalcenter.org

Email: WLCDR@lls.edu

Exceptional Parents Unlimited

4440 N. First St.

Fresno, CA 93726

Tel: (559) 229-2000

Fax: (559) 229-2956

Email: info@exceptionalparents.org

Web: www.exceptionalparents.org

Family Empowerment of Northern California, Inc.

3830 Rancho Road

Redding, CA 96002

Tel: (530) 226-5129

Fax: (530) 226-5141

Web: www.rfenc.org

The Family Resource Network

5232 Claremont Avenue

Oakland, CA 94618

Tel: (510) 547-7322

Fax: (510) 658-8354

Fiesta Educativa, Inc.

163 South Avenue 24, Suite 201
Los Angeles, CA 90031
Tel: (323) 221-6696
Fax: (323) 221-6699
Web: www.fiestaeducativa.org
Email: info@fiestaeducativa.org

Hearing and Speech Center of Northern California

1234 Divisadero Street
San Francisco, CA 94115
Tel: (415) 921-7658
TTY: (415) 921-8990
Fax: (415) 921-2243
Web: www.hearingspeech.org
Email: info@hearingspeech.org

Independent Living Centers of California

To find a California center in you area, contact the
California State Independent Living Council
1600 K St., Suite 100
Sacramento, CA 95814
Tel: (916) 445-0142
Toll Free: (866) 866-7452
TTY: (916) 445-5627
Fax: (916) 445-5973

Lighthouse for the Blind and Visually Impaired

214 Van Ness Avenue
San Francisco, CA 94102
Tel: (415) 431-1481
TTY: (415) 431-4572
(use text [TTY] telephone or dial relay)
Fax: (415) 863-7568
Web: www.lighthouse-sf.org

Laurent Clerc National Deaf Education Center

Gallaudet University
800 Florida Ave., NE
Washington, D.C. 20002
Tel/TTY: (202) 651-5031
Fax: (202) 651-5109
Web: <http://clerccenter.gallaudet.edu>

Little People of America, Inc.

5289 NE Elam Young Parkway, Suite F-100
Hillsboro, OR 97124
Toll-free: (888) LPA-2001 (English and Spanish)
Tel: (503) 846-1562
Fax: (503) 846-1590
Web: www.lpaonline.org
E-mail: info@lpaonline.org

Loving Your Disabled Child

4528 Crenshaw Blvd.
Los Angeles, CA 90043
Tel: (323) 299-2925
Fax: (323) 299-4373

NEW:

3704 7th Avenue
Los Angeles, CA 90018
Tel: (323) 373-0323
Fax: (323) 373-1213
Web: www.lydc.org
Email: lydcprc@sbcglobal.net

MATRIX, A Parent Network and Resource Center

94 Galli Drive, Suite C

Novato, CA 94949

Main Tel: (415) 884-3535

Toll Free: (800) 578-2592

Fax: (415) 884-3555

Email: info@matrixparents.org

Web: www.matrixparents.org

National Federation of the Blind of CA

175 E. Olive Avenue, Suite 308

Burbank, CA 91502-1812

Tel: (818)-558-6524

Tel: (410) 659-9314

Fax: (818)-729-7930

Web: www.nfb.org

National Information Center

for Children & Youth with Disabilities (NICHCY)

PO Box 1492

Washington, D.C. 20013

Tel: (800) 695-0285

TTY: (800) 695-0285

Fax: (202) 884-8441

Web: www.nichcy.org

Email: nichcy@aed.org

Parents Helping Parents of Santa Clara (PHP)

3041 Olcott Street

Santa Clara, CA 95054-3222

Tel: (408) 727-5775;

TTY: (408) 748-8339

Fax: (408) 727-0182

E-mail: info@php.com

Web: www.php.com

Parents Helping Parents of Hayward (PHP)

677 Paradise Blvd.

Hayward, CA 94541

Tel: (510) 276-9479 (Answering Service)

E-mail: info@php.com

Web: www.php.com

Parents of Watts

10828 Lou Dillon Ave

Los Angeles, CA 90059

Tel: (323) 566-7556

Fax: (323) 569-3982

Email: pow90059@yahoo.com

Protection & Advocacy, Inc.

1330 Broadway, Suite 500

Oakland, CA 94612

Tel: (510) 267-1200

Toll Free :(800) 776-5746

TTY: (510) 649-0154

TTY-Toll Free: (800) 776-5746

Fax: (510) 267-1201

Web: www.pai-ca.org

**Rowell Family Empowerment
of Northern California**

Administrative Offices

3830 Rancho Road

Redding, CA 96002

Tel: (530) 226-5129

Toll Free: (877) 227-3471

Fax: (530) 226-5129

Paradise, CA Office:

5910-D Clark Road
Paradise, CA 95969
Tel: (530) 876-8321
Toll Free: (888) 263-1311
Fax: (530) 876-0346
Web: www.rfenc.org

Support for Families of Children with Disabilities

2601 Mission Street, #300
San Francisco, CA 94110
Tel: (415) 282-7494
Fax: (415) 282-1226
Help Line for Parents:
Tel: (415) 920-5040
Fax: (415) 920-5099
Web: www.supportforfamilies.org

Team of Advocates for Special Kids (TASK)

4550 Kearny Villa Road, Suite 102
San Diego, CA 92123
Tel: (858) 874-2386;
Fax: (858) 874-0123
TTY: (858) 874-2375
Web: www.taskca.org

Through the Looking Glass

Provides support, training and counseling
for parents with disabilities

2198 Sixth Street, Suite 100

Berkeley, CA 94710

Tel: (510) 848-1112

Toll Free: (800) 644-2666

Fax: (510) 848-4445

TTY: (800) 804-1616

Web: www.lookingglass.org

Email: TLG@lookingglass.org

United Cerebral Palsy

1660 L Street, NW, Suite 700

Washington, DC 20036

Toll Free: (800) 872-5827

Tel: (202) 776-0406

Fax: (202) 776-0414

Web: www.ucp.org

Email: webmaster@ucp.org

Vietnamese Parents with Disabled

Children Association (VPDCA)

7526 Syracuse Ave

Stanton, CA 90680

Tel: (714) 527-9216

Fax: (562) 981-2718

Webs: www.vpdca.org

TITLE	PURPOSE
Americans with Disabilities Act	Prohibits discrimination against people with disabilities in employment, transportation, public accommodations, communications and governmental activities.
Section 504 of the Rehabilitation Act	Prohibits discrimination by federal agencies against persons with disabilities or exclusion from activities or benefits solely based on the person's disability
"504" (Federal)	
Individuals with Disabilities Education Act "IDEA" Federal	Guarantees all children with disabilities access to a free and appropriate public education
California Disabled Persons Act	Guarantees full and equal access to people with disabilities to all public places
Unruh Civil Rights Act (California)	Prohibits discrimination against people with disabilities in employment, trans

CODE CITATION	MORE INFORMATION AT:
42 U.S.C. § 12101 et seq.	www.access.gpo.gov/uscode/ title42/title42.com
29 U.S.C. § 794 et seq.	www.access.gpo.gov/uscode/ title29/chapter16_subchap- terv_.html
20 U.S.C. § 1415 et seq.	www.access.gpo.gov/uscode/ title20/chapter33_.html
42 U.S.C. § 12101 et seq.	ag.ca.gov/publications/ civilrights/01CRhandbook/ chapter4.htm
California Clivil Code § 51 et seg.	ag.ca.gov/publications/ civilrights/01CRhandbook/cha pter4.htm

Appendix B: Definitions of Disability and Selected Provisions under State and Federal Law

Definition of Disability under federal law:

A physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment. 28 C.F.R. §35.104 (1995).

- The key term in this definition is "substantially." Minor impairments, or temporary impairments, are not covered. Federal law looks to whether someone is substantially limited after mitigating measures—such as eye glasses, prosthetics and medical treatment have been provided.
- The term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- The term "record of such an impairment" means that a person has a documented medical history of an impairment that substantially limits a major life activity.
- The term "regarded as having an impairment" means that a person does not actually have a disability that substantially limits a major life activity, but that the person is treated by a school district as if he or she did in fact have a disability.
- Some disabilities that are covered by this definition include, but are not limited to, contagious and non-contagious diseases, orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV/AIDS, spinal cord injury, spina bifida, amputation, severe juvenile arthritis, and many others. This is not an exhaustive list, and furthermore a person may have multiple disabilities.

- Almost all students who have been placed in special education will be covered by the federal definition of disability. However, many special education students do not have physical disabilities, and some of the rights listed above, such as the right to a barrier-free environment, do not apply to them. The right to a barrier-free environment will apply to almost all students who use wheelchairs for mobility, or who are severely limited in their ability to walk. The right to a barrier-free environment also applies to students with visual impairments and hearing impairments.

Definition of Disability under California State law

"Physical disability" includes, but is not limited to, all of the following: (1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following: (A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, pulmonary, special sense organs, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. (B) Limits a major life activity. (2) Any other health impairment not described in paragraph (1) that requires special education or related services. (3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part. (4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult. (5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2). **Cal. Gov't Code § 12926(k).**

A mental or psychological disorder or condition, or a physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss, limits a major life activity if it makes the achievement of the major life activity difficult. **Cal. Gov't Code §§ 12926(i)(1)(B), (k)(1)(B)(ii).**

The Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. **Cal. Gov't Code § 12926.1.**

Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. **Cal. Gov't Code § 12926.1.**

Americans with Disabilities Act of 1990. **Cal. Gov't Code § 12926.1.** If a disabled student receives special education, he or she is disabled under California Law. If a disabled student is not receiving special education services, he or she may still be disabled under California law even if they are not considered disabled under Federal law. For example, someone with a vision impairment who may use glasses or contact lenses would still be considered disabled under state but not federal law.

Selected provisions from state and federal law

Introductory note: This Appendix contains selected provisions from the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Unruh Civil Rights Act, the California Disabled Persons Act and California Government Code Sections 4450 et seq. These legal authorities were selected because they are particularly relevant to the rights of students with physical disabilities in the public schools. The complete text of these statutes and regulations are not provided, nor does this Appendix cite any judicial case law. The cited passages are provided for purposes of general information. Please note that only an attorney can tell you exactly how state and federal law will apply to your particular case, and whether you have a meritorious legal claim against your school district.

You can find the full text of these statutes and regulations at public law libraries. To find the law library in your county, look in the government listings of the phone book or go to www.cccll.org/cccll-cll.htm

Where extended passages have been edited from the text you will see the following notation: "*****" Because the Department of Justice regulations under Title II of the ADA are substantially similar to the Department of Education regulations under Section 504, where the same legal requirement appears in both sets of regulations only one statute's regulations are cited. Other relevant information appears in brackets [], or appears as an editorial note.

TITLE II OF THE AMERICANS WITH DISABILITIES ACT OF 1990 PROVIDES:

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. §12132.

QUALIFIED INDIVIDUAL WITH A DISABILITY -The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. §12131(2).

EDITOR'S NOTE: Title II became effective as law on January 26, 1992.

THE U.S. DEPARTMENT OF JUSTICE REGULATIONS PROMULGATED PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT PROVIDE:

General Prohibitions Against Discrimination

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing or other arrangements, on the basis of disability-

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits,

or services that are as effective as those provided to others;

- (v) Aid or perpetuate discrimination against a qualified individual with disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's programs;
- (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
- (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not directly or through contractual or other arrangements, utilize criteria or methods of administration:

- (i) That has the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
- (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
- (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same state.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

28 C.F.R. §35.130

PROGRAM ACCESSIBILITY

Discrimination Prohibited

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

28 C.F.R. §35.149 (1996).

Existing Facilities

(a) *General.* A public entity shall operate each service, program, or

activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not-

- (1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

- (2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

- (3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial or administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration of burdens must be made by the head of a public entity or your designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) *Methods* - (1) *General*. A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of §35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs,

and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility including:

- (i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;
- (ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or
- (iii) Adopting other innovative methods.

(c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, [before January 26, 1995] but in any event as expeditiously as possible.

(d) *Transition plan.*

(1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within 6 months of January 26, 1992 [July 26, 1992], a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers,

followed by walkways serving other areas.

(3) The plan shall, at a minimum-

- (i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities
- (ii) Describe in detail the methods that will be used make the facilities accessible;
- (iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and,
- (iv) Indicate the official responsible for implementation of the plan.

(4) If a public entity has already complied with the transition plan requirement of a federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

28 C.F.R. §35.150 (1996).

Department of Justice Interpretation of Program Accessibility:

The Department wishes to clarify that, consistent with longstanding interpretation of section 504, carrying an individual with disability is considered an ineffective and therefore unacceptable method of achieving program accessibility. [citation omitted]. Carrying will be permitted only in manifestly exceptional cases, and only if all personnel who are permitted to participate in carrying an individual with a disability are formally instructed on the safest and least humiliating means of carrying. "Manifestly exceptional" cases in which carrying would be permitted might include, for example, programs conducted in unique facilities, such as an oceanographic vessel, for which structural changes and devices necessary to adapt the facility for use by individuals with mobility impairments are unavailable or prohibitively expensive. Carrying is not permitted as an alternative to structural modifications such as installation of a ramp or a chairlift.

28 C.F.R. Pt. 35, App. A at 474.

Telecommunication Devices for the Deaf (TDD's).

Where a public entity communicates by telephone with applicants and beneficiaries, TDDs, or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.

28 C.F.R. § 35.161 (1996).

Telephone Emergency Services.

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD and computer modems.

28 C.F.R. § 35.162 (1996).

Information and Signage.

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

-(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities.

The international symbol for accessibility shall be used at each accessible entrance of a facility.

28 C.F.R. § 35.163 (1996).

Retaliation or Coercion.

-(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an

investigation, proceeding, or hearing under the Act or this part.

-(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of your having exercised or enjoyed, or on account of your having exercised or enjoyed, or on account of your having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

28 C.F.R. §35.134 (1996).

Self-evaluation.

-(a) A public entity shall, within one year of the effective date of this part [no later than January 26, 1993], evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies and practices is required, the public entity shall proceed to make the necessary modifications.

-(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing persons with disabilities, to participate in the self-evaluation process by submitting comments.

-(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

---(1) A list of the interested persons consulted;

---(2) A description of the area examined and any problems identified; and

---(3) A description of any modifications made.

-(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

28 C.F.R. §35.105 (1996).

Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding

the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

28 C.F.R. §35.106 (1996).

Personal Devices and Services.

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

28 C.F.R. §35.135 (1996).

SECTION 504 OF THE REHABILITATION ACT OF 1973, 29 U.S.C. §§794 ET. SEQ.

No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. 29 U.S.C. §794(a).

THE U.S. DEPARTMENT OF EDUCATION SECTION 504 REGULATIONS PROVIDE:

Discrimination Prohibited.

-(a) *General.* 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.

34 C.F.R. §104.4(a)(1996).

New Construction.

-(a) *Design and construction.* Each facility or part of facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

-(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.*

-(1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 C.F.R. subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those building Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

-(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

34 C.F.R. § 104.23 (1996).

EDITOR'S NOTE: The effective date of the Department of Education Section 504 regulations was May 9, 1980. The UFAS standards are now largely replaced by the ADAAG standards (Americans with Disabilities Act Accessibility Guidelines.)

Nonacademic services.

(a) General.

- (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

- (2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to non-handicapped students only if separation or differentiation is consistent with the requirements of §104.34 [integrated nonacademic settings providing comparable facilities] and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

34 C.F.R. § 104.37 (1996).

Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

34 C.F.R. § 104.38 (1996).

THE UNRUH CIVIL RIGHTS ACT CALIFORNIA CIVIL CODE SECTIONS 51 ET SEQ.

Section 51.

This section shall be known, and may be cited, as the Unruh Civil Rights Act. All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services

in all business establishments of every kind whatsoever. This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or disability. Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever to any new or existing establishment, facility, building, improvement, or any other structure, or to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other provisions of the law.

A violation of the right of any individual under the Americans with Disabilities Act of 1990 shall also constitute a violation of this section.

Section 51.7.

-(a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics.

Section 52. Penalty for Discrimination.

--(a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 or 51.5, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000, and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided by Section 51 or 51.5

--(e) Actions under this section shall be independent of any other remedies or procedures that may be available to an aggrieved party.

Section 54. Equal Rights to Public Facilities.

-(a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, side walks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

-(b) (1) "Disability" means any mental or physical disability as defined in Section 12926 of the Government Code.

(2) "Medical condition" has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

-(c) A violation of the right of an individual under the Americans with Disabilities Act of 1990 also constitutes a violation of this section.

Section 54.1. Right to Full and Equal Access to Public Facilities.

-(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

-(2) As used in this section, "telephone facilities" means tariff items and other equipment and services that have been approved by the Public Utilities Commission to be used by individuals with disabilities in a manner feasible and compatible with the existing

telephone network provided by the telephone companies.

-(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 also constitutes a violation of this section and nothing in this section shall be construed to limit the access of any person in violation of that act.

Section 54.2. Guide Dog, Signal Dog, or Service Dog Permitted.

-(a) Every individual with a disability has the right to be accompanied by a guide dog, signal dog, or service dog, especially trained for the purpose, in any of the places specified in Section 54.1 without being required to pay an extra charge or security deposit for the guide dog, signal dog, or service dog. However, the individual shall be liable for any damage done to the premises or facilities by your dog.

Section 54.3. Denial or Interference with Admittance - Punishment.

-(a) Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1, and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$1,000 attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1, and 54.2. "Interfere," for purposes of this section, includes, but is not limited to, preventing or causing the prevention of a guide dog, signal dog, or service dog from carrying out its functions in assisting a disabled person.

-(c) A person may not be held liable for damages pursuant to both this section and Section 52 for the same act or failure to act.

Section 54.4. Pedestrian Failure to Carry White Cane of Use Guide Dog Not Negligence.

A blind or otherwise visually impaired pedestrian shall have all of the rights and privileges conferred by law upon other persons in any of the places, accommodations, or conveyances specified in Sections 54 and 54.1, notwithstanding the fact that the person is not carrying a predominantly white cane (with or without a red tip), or using a guide dog. The failure of a blind or otherwise visually impaired person to carry such a cane or to use such a guide dog shall not constitute negligence per se.

Section 54.6. "Visually Impaired" Defined.

As used in this part, "visually impaired" includes blindness and means having central visual acuity not to exceed 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle is not greater than 20 degrees.

Section 55. Injunction by Aggrieved Person.

Any person who use aggrieved or potentially aggrieved by a violation of Section 54 or 54.1 of this code, Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code, or Part 5.5 (commencing with Section 19955) of Division 13 of the Health and Safety Code may bring an action to enjoin the violation. The prevailing party in the action shall be entitled to recover reasonable attorney's fees.

CALIFORNIA GOVERNMENT CODE SECTIONS 4450 ET SEQ.

Section 4450. Purpose; standards for access to buildings; regulations

-(a) It is the purpose of this chapter to ensure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities.

-(b) However, in no case shall the State Architect's regulations and building standards prescribe a lesser standard of accessibility or usability than provided by the Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990.

Section 4451. Buildings and facilities to which chapter applicable; standards and specifications; exceptions -(a) Except as otherwise provided in this section, this chapter shall be limited in its application to all buildings and facilities stated in Section 4450 intended for use by the public, with any reasonable availability to, or usage by, persons with disabilities, including all facilities used for education and instruction, including the University of California, the California State University, and the various community college districts, that are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state.

-(b) Buildings, structures, and facilities, occupied 50 percent or more, that are leased, rented, contracted, sublet, or hired for periods exceeding two years by any municipal, county, or state division of government, or special district shall be made accessible to, and usable by, persons with disabilities. Exceptions to this paragraph may be made upon application to, and approval by, the Department of Rehabilitation.

-(c) Except as otherwise provided by law, buildings, structures, sidewalks, curbs, and related facilities subject to the provisions of this chapter shall conform to the building standards published in the California Building Standards Code relating to access for persons with disabilities and the other regulations adopted pursuant to Section 4450 that are in effect on the date of an application for a building permit. With respect to buildings, structures, sidewalks, curbs, and related facilities not requiring a building permit, building standards published in the California Building Standards Code relating to access for persons with disabilities and other regulations adopted pursuant to Section 4450, and in effect at the time construction is commenced shall be applicable.

-(d) Until building standards are published in the California Building Standards Code and other regulations are developed by the State Architect and adopted by the California Building Standards Commission pursuant to Section 4450, buildings, structures, sidewalks, curbs, and related facilities subject to the provisions of this chapter shall meet or exceed the requirements of Title III of Subpart D of the Americans with Disabilities Act of 1990.

-(e) This chapter shall apply to temporary or emergency construction as well as permanent buildings.

-(f) Administrative authorities, as designated under Section 4453, may grant exceptions from the literal requirements of the building standards published in the California Building standards Code relating to access for persons with disabilities, or the other regulations adopted pursuant to this section, or permit the use of other methods or materials, but only when it is clearly evident that equivalent facilitation and protection are hereby secured.

Section 4452. Minimum standards; deviation from specifications

It is the intent of the Legislature that the building standards published in the State Building standards Code relating to access by the physically handicapped and the other regulations adopted by the State Architect pursuant to Section 4450 shall be used as minimum requirements to insure that buildings, structures and related facilities covered by this chapter are accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space, or facility where the general public is concerned.

Any unauthorized deviation from such regulations or building standards shall be rectified by full compliance within 90 days after discovery of the deviation.

Section 4455.5. Elevators; Braille Symbols

All new elevators in public buildings or facilities after the operative date of the act that amended this section during the first year of the 1979-80 Regular Session shall have Braille symbols and marked Arabic

numerals corresponding to the numerals on the elevator buttons embossed immediately to the left thereof.

All new door casings on all elevator floors after the operative date of this section shall have the number of the floor on which the casing is located embossed in Braille symbols and marked Arabic numerals on both sides at a height of approximately 60 inches from the floor.

Section 4456. Alteration of existing buildings or facilities

After the effective date of this section, any building or facility which would have been subject to this chapter but for the fact it was constructed prior to November 13, 1968, shall comply with the provisions of this chapter when alterations, structural repairs or additions are made to such building or facility. This requirement shall only apply to the area of specific alteration, structural repair or addition and shall not be construed to mean that the entire structure or facility is subject to this chapter.

Section 4457. Portable buildings of school district

On or after January 1, 1986, all portable buildings purchased, leased, or constructed by a school district shall meet the requirements of this chapter, except as provided in subdivision (f) of Section 4451.

California Government Code Section 11135

(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if

the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c)(1) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

California Government Code Section 12926

(h) "Medical condition" means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of

a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) "Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable modifications of policies, practices and procedures, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(k) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable modifications of policies, practices and/or procedures, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(l) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics

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