

THE
DYSLEXIA
HANDBOOK

REVISED 2007

**Procedures Concerning
Dyslexia and Related Disorders**

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**TEXAS EDUCATION AGENCY
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Foreword

Reading is the fundamental skill upon which all formal education depends. Research now shows that a child who doesn't learn the reading basics early is unlikely to learn them at all. Any child who doesn't learn to read early and well will not easily master other skills and knowledge, and is unlikely to ever flourish in school or life.

Moats, L. C. (June, 1999). *Teaching reading IS rocket science: What expert teachers should know and be able to do*. Washington, DC: American Federation of Teachers.

Texas has a long history of supporting the fundamental skill of reading. This history includes a focus on early identification and intervention for children who experience reading difficulties. In support of new dyslexia legislation passed by the Texas Legislature, the State Board of Education (SBOE) first approved the Texas Education Agency handbook *Dyslexia and Related Disorders: An Overview of State and Federal Requirements* in January 1986.

The SBOE approved new guidelines referred to as the *Revised Procedures Concerning Dyslexia and Related Disorders* in 1992, which were revised in 1998. The handbook was updated again in 2001 and was called *The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders*. The SBOE continued to stress the importance of using research-based strategies to prevent reading difficulties and provide appropriate instruction to struggling readers in November 2006 when *The Dyslexia Handbook Revised 2007: Procedures Concerning Dyslexia and Related Disorders* was reviewed and approved. This handbook replaces all previous handbooks and guidelines.

The Dyslexia Handbook – Revised 2007: Procedures Concerning Dyslexia and Related Disorders contains the SBOE-approved procedures concerning dyslexia and related disorders. The Texas Education Agency handbook provides guidelines for school districts to follow as they identify and provide services for students with dyslexia. Additionally, the handbook provides school districts and parents/guardians with information regarding the state's dyslexia statutes and their relation to these federal laws: the Rehabilitation Act of 1973, §504, and the Individuals with Disabilities Education Act of 2004 (IDEA).

In addition to *The Dyslexia Handbook – Revised 2007: Procedures Concerning Dyslexia and Related Disorders*, resources include a State Dyslexia Network, a State Dyslexia Consultant, and a hotline (1-800-232-3030) at regional Education Service Center (ESC) 10. There are also designated consultants at each ESC available to assist district stakeholders with implementing state law and SBOE rules and procedures regarding dyslexia. The handbook contains contact information for the State Dyslexia Consultant and for the designated consultants at each regional Education Service Center.

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The Texas Education Agency

Dr. Susan Barnes
Associate Commissioner, Standards and Programs

Dr. Sharon Jackson
Deputy Associate Commissioner, Standards and Alignment

George Rislov
Managing Director, Division of Curriculum

Monica Martinez
Curriculum Director, Division of Curriculum

Casey McCreary
Director of Reading, Division of Curriculum

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Brenda Taylor
State Dyslexia Consultant

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Dyslexia Task Force members

Kay Allen, Dr. Criselda Alvarado, Karen Avrit, Sally Bates, Dr. Elsa Cardenas-Hagen, Suzanne Carreker, Nancy Coffman, Lynne Cohen, Thelma Conner, Joyce Faulks-Jackson, Dr. Jack Fletcher, Nancy Hill, Dr. Sharon Jackson, Gladys Kolenovsky, Helen Macik, Dr. Sandy Maddox, Lois McCook, Casey McCreary, Geraldine Miller, Gina Mitchell, Dr. Louisa Moats, Jan Moberley, Susan Patteson, Joyce Pickering, Sylvia Portnoy, Margaret Smith, Brenda Taylor, Paula Tilker, Valerie Tucker, Dr. Sharon Vaughn, and Dr. Karen Vickery.

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Preface

Students who continue to struggle to read, despite appropriate or intensified instruction, are provided organized systems of reading support in the state of Texas. Some students struggle during early reading acquisition. Others do not struggle until the later grades, when they face more complex language demands (e.g., reading textbooks, grammar). Some may be non-English speakers who struggle to read in their native languages and/or English language learners (ELLs) who struggle to read despite having appropriately developed oral English language. For many struggling readers, including students in all grades, non-English speakers, and ELLs, the difficulty with reading may be a result of dyslexia.

The purpose of this handbook of procedures related to dyslexia is to provide guidelines for school districts, charter schools, campuses, teachers, and parents or guardians in the identification and instruction of students with dyslexia. This handbook will be helpful to districts and charter schools as they develop their written procedures regarding students with dyslexia. While state and federal laws provide a legal framework, districts and charter schools should also address the individual needs of the students they serve.

In Texas the identification and instruction of students with dyslexia and related disorders are mandated and structured by two statutes and one rule. Texas Education Code (TEC) §38.003 (1) defines dyslexia and related disorders, (2) mandates testing students for dyslexia and providing instruction for students with dyslexia, and (3) gives the State Board of Education authority to adopt rules and standards for administering testing and instruction. Chapter 19 of the Texas Administrative Code (TAC) §74.28 outlines the responsibilities of districts and charter schools in the delivery of services to students with dyslexia. Finally, The Rehabilitation Act of 1973 Section 504 establishes assessment and evaluation standards and procedures for students.

In addition to the statutes and rules related to dyslexia, the State Board of Education approved (1992) and revised (1998) a set of guidelines referred to as the *Revised Procedures Concerning Dyslexia and Related Disorders*. The present handbook, *The Dyslexia Handbook – Revised 2007: Procedures Concerning Dyslexia and Related Disorders*, replaces all previous handbooks and guidelines. The handbook does introduce legal changes with the addition of TEC §7.028(b) and with revisions to TAC §74.28(c) and (h).

The following chapters are included in this handbook:

- I. Definitions and Characteristics of Dyslexia
- II. Procedures for Assessing Students for Dyslexia
- III. Referral to Special Education
- IV. Instruction for Students with Dyslexia

The dyslexia handbook has 11 appendices:

- A. A flow chart that provides a pathway to the identification and provision of instruction for students with dyslexia
- B. Information for districts implementing response to intervention
- C. An overview of laws and rules for dyslexia
- D. State statutes related to dyslexia in Texas
- E. Accommodation information
- F. Questions and answers
- G. Associated terms
- H. Contacts for further information and organizations
- I. Publications related to dyslexia
- J. Office of Civil Rights information on students with disabilities preparing for postsecondary education
- K. The Rehabilitation Act of 1973, §504

I. Definitions and Characteristics of Dyslexia

The student who struggles with reading and spelling often puzzles teachers and parents. The student displays average ability to learn in the absence of print and receives the same classroom instruction that benefits most children; however, the student continues to struggle with some or all of the many facets of reading and spelling. This student may be a student with dyslexia.

As defined in TEC §38.003:

(1) *Dyslexia* means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.

(2) *Related disorders* includes disorders similar to or related to dyslexia such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

The current definition from the International Dyslexia Association states:

Dyslexia is a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge (Adopted by the International Dyslexia Association Board of Directors, November 12, 2002).

The primary difficulties of a student identified as having dyslexia occur in phonemic awareness and manipulation, single-word decoding, reading fluency, and spelling. Secondary consequences of dyslexia may include difficulties in reading comprehension and/or written expression. These difficulties are unexpected for the student's age, educational level, or cognitive abilities. Additionally, there is often a **family history** of similar difficulties.

The following are the primary reading/spelling characteristics of dyslexia:

- Difficulty reading real words in isolation;
- Difficulty accurately decoding nonsense words;
- Slow, inaccurate, or labored oral reading; (lack of reading fluency);
- Difficulty with learning to spell.

The reading/spelling characteristics are the result of difficulty with the following:

- The development of phonological awareness, including segmenting, blending, and manipulating sounds in words;
- Learning the names of letters and their associated sounds;
- Phonological memory (holding information about sounds and words in memory);
- Rapid naming of familiar objects, colors, or letters of the alphabet.

Secondary consequences of dyslexia may include the following:

- Variable difficulty with aspects of reading comprehension;
- Variable difficulty with aspects of written composition;
- A limited amount of time spent in reading activities.

Common Signs of Dyslexia:

The following signs may be associated with dyslexia if they are **unexpected** for the individual's age, educational level, or cognitive abilities.

Pre-school:

- May talk later than most children;
- May have difficulty with rhyming;
- May have difficulty pronouncing words (i.e., *busgetti* for *spaghetti*, *mawn lower* for *lawn mower*);
- May have poor auditory memory for nursery rhymes and chants;
- May be slow to add new vocabulary words;
- May be unable to recall the right word;
- May have trouble learning numbers, days of the week, colors, shapes, and how to spell and write his or her name.

Kindergarten through third grade:

- Fails to understand that words come apart; for example, that *snowman* can be pulled apart into *snow* and *man* and, later on, that the word *man* can be broken down still further and sounded out as: /m/ /ā/ /n/;
- Has difficulty learning the letter names and their corresponding sounds;
- Has difficulty decoding single words (reading single words in isolation)—lacks a strategy;
- Has difficulty spelling phonetically;
- Reads dysfluently (choppy and labored);
- Relies on context to recognize a word.

Fourth grade through high school:

- Has a history of reading and spelling difficulties;
- Avoids reading aloud;
- Reads most materials slowly; oral reading is labored, not fluent;
- Avoids reading for pleasure;
- May have an inadequate vocabulary;

- Has difficulty spelling; may resort to using less complicated words in writing that are easier to spell.

Sources for Common Signs of Dyslexia was compiled from the following:

Common Signs, (n.d.). Retrieved July 10, 2006, from The International Dyslexia Association Web site:
http://www.interdys.org/servlet/compose?section_id=5&page_id=79

Shaywitz, S. (2003). *Overcoming dyslexia: A new and complete science-based program for reading problems at any level*. New York: Alfred A Knopf.

II. Procedures for Assessing Students for Dyslexia

Research shows that children who read well in the early grades are far more successful in later years; and those who fall behind often stay behind when it comes to academic achievement.

Snow, C. E., Burns, S. M., and Griffin, P. (Eds.) (1998). *Preventing reading difficulties in young children*. Washington, D.C.: National Academy Press.

Procedures Required By State And Federal Law Prior To Formal Assessment

The Student Success Initiative (SSI) is a state-level effort to ensure that all Texas students receive the instruction and support needed to be academically successful in reading and mathematics. For students that demonstrate difficulties during early reading instruction (kindergarten, grades 1 and 2), the most common form of instructional help is available through the SSI as mandated by TEC §28.006. This education code requires districts and charter schools to administer early reading instruments to all students in kindergarten and grades 1 and 2 to assess their reading development and comprehension. If, on the basis of the reading instrument results, students are determined to be **at risk** for dyslexia or other reading difficulties, the district or charter school **must** notify the students' parents or guardians. According to TEC §28.006(g), the district or charter school **must** also implement an accelerated (intensive) reading program that appropriately addresses the students' reading difficulties and enables them to "catch up" with their typically performing peers.

As evident through the components of SSI and other state-level initiatives that support reading, Texas is committed to data-driven instruction. Early reading assessments are required by state law and are evidence-proven to be "best practice." With the use of early reading assessment instruments, teachers can quickly assess a child's reading abilities and provide prescriptive instruction by isolating the skills that need strengthening.

The Texas Reading First grant program, as a part of the federal program authorized by the No Child Left Behind (NCLB) Act of 2001, is another data-driven initiative that provides an opportunity for participating states to implement scientifically based reading programs that help all students achieve reading mastery by the end of the third grade. Texas Reading First requires participating campuses to utilize a 3-Tier Reading Model when providing levels of intervention for struggling readers, as well as to employ a continuous cycle of assessment, data analysis, and ongoing progress monitoring to hone teaching and intervention strategies.

The interventions provided to students who are reported to be at risk for dyslexia or other reading difficulties should align with the requirements of NCLB legislation that **requires** that districts and charter schools implement reading programs using scientifically based reading research (SBRR). Ongoing assessment and progress monitoring of reading achievement gains is **required** for students at risk. Additional information pertaining to initiatives that support the reading achievement of Texas students is available on the Texas Education Agency Web page: www.tea.state.tx.us.

The most recent reauthorization of the federal Individuals with Disabilities Education Act (IDEA), passed in 2004, is consistent with NCLB in emphasizing quality of instruction and documentation of student progress. A process based on the student's response to scientific, research-based intervention is one of the criteria included in IDEA that states may use in determining whether a student has a specific learning disability including dyslexia (see Appendix B for a review of information related to response to intervention). Regardless of the process in place, the parents or guardians always have the right to request a referral for assessment at any time.

The definition of dyslexia adopted by the International Dyslexia Association (IDA) indicates that the unexpected difficulties that students with dyslexia demonstrate in the area of reading are seen **despite the provision of effective (scientifically based) classroom instruction.**

Procedures For Assessment Of Dyslexia

Districts and charter schools must establish written procedures for recommending and assessing students for dyslexia within general education. While districts and charter schools must follow federal and state guidelines, they must also develop procedures that address the needs of their student populations.

1. Data Gathering

At any time (from kindergarten through grade 12) that a student continues to struggle with one or more components of reading, districts and charter schools must collect additional information about the student. Districts and charter schools should use this information to evaluate the student's academic progress and determine what actions are needed to ensure the student's improved academic performance. Some of the information that the district or charter school collects is in the student's cumulative folder; other information is available from teachers and parents or guardians. To ensure that underachievement in a student suspected of having dyslexia (a specific learning disability) is not due to lack of appropriate instruction in reading, other information should be considered. This information **should** include data that demonstrates the student was provided appropriate instruction and data-based documentation of repeated assessments of achievement at reasonable intervals (progress monitoring), reflecting formal assessment of student progress during instruction. Additional information to be considered includes the results from some or all of the following:

- Vision screening;
- Hearing screening;
- Teacher reports of classroom concerns;
- Basal reading series assessment;
- Accommodations provided by classroom teachers;
- Academic progress reports (report cards);
- Samples of school work;
- Parent conferences;

- Testing for limited English proficiency;
- Speech and language screening through a referral process;
- The K–2 reading instrument as described in TEC §28.006;
- State student assessment program as described in TEC §39.022.

One of the actions that the district or charter school has available is to recommend that the student be assessed for dyslexia. The district or charter school recommends assessment for dyslexia if the student demonstrates the following:

- Poor performance in one or more areas of reading and/or the related area of spelling that is unexpected for the student’s age/grade;
- Characteristics of dyslexia.

When the district or charter school recommends that a student be assessed for dyslexia, the district or charter school proceeds using the following procedures for assessment.

2. Formal Assessment

Students enrolling in public schools in Texas shall be assessed for dyslexia and related disorders at appropriate times (TEC §38.003 [a]). The appropriate time depends upon multiple factors including the student’s reading performance; reading difficulties; poor response to supplemental, scientifically based reading instruction; teachers’ input; and input from the parents or guardians. Additionally, the appropriate time for assessing is early in a student’s school career (19 TAC §74.28), **the earlier the better**. While earlier is better, students should be recommended for assessment for dyslexia even if the reading difficulties appear later in a student’s school career.

These procedures must be followed:

- Notify parents or guardians of proposal to assess student for dyslexia (§504);
- Inform parents or guardians of their rights under §504;
- Obtain permission from the parent or guardian to assess the student for dyslexia;
- Assess student, being sure that individuals/professionals who administer assessments have training in the evaluation of students for dyslexia and related disorders (19 TAC §74.28).

The notices and consent must be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless it is clearly not feasible to do so.

Tests, assessments, and other evaluation materials must have the following characteristics:

- Be validated for the specific purpose for which the tests, assessments, and other evaluation materials are used (§504);
- Include material tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient (§504);

- Be selected and administered so as to ensure that, when a test is given to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level, or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (§504);
- Include multiple measures of a student's reading abilities such as informal assessment information (e.g., anecdotal records, lists of books the student has read, audio recordings of the student's oral reading) (§504);
- Be administered by trained personnel and in conformance with the instructions provided by the producer of the evaluation materials (§504).

Domains to Assess

The district or charter school administers measures that are related to the student's educational needs. Depending upon the student's age and stage of reading development, the following are the areas related to reading that should be assessed:

- Reading real and nonsense words in isolation (decoding);
- Phonological awareness;
- Letter knowledge (name and associated sound);
- Rapid naming;
- Reading fluency (rate and accuracy);
- Reading comprehension;
- Written spelling.

Based on the student's academic difficulties and characteristics, additional areas that can be assessed include vocabulary, written expression, handwriting, and mathematics.

3. English Language Learners (This refers to students served in bilingual and ESL programs as well as students designated limited English proficient (LEP) whose parents have denied services.)

Much diversity exists among English language learners (ELLs). The identification and service delivery process for dyslexia must be in step with the student's linguistic environment and educational background. Involvement of the Language Proficiency Assessment Committee (LPAC) is recommended.

Additional Data Gathering (in addition to the information previously listed under "DATA GATHERING"):

- Language Proficiency Assessment Committee (LPAC) documentation (TEC §89.1220 [g, h, i]) that includes the following:
 - Home Language Survey;
 - Assessment related to identification for limited English proficiency (oral language proficiency tests and norm-referenced tests);
 - TAKS documentation when available;
 - Texas English Language Proficiency System (TELPAS) information (Reading Proficiency Test in English [RPTE] and Texas Observation Protocol [TOP]);
 - Type of language programming provided and language of instruction;

- Linguistic environment and second-language acquisition development;
- Previous schooling in and outside of the United States.

Additional Assessment (in addition to the information listed under “DOMAINS TO ASSESS”):

- Comprehensive oral language proficiency testing should be completed in English and the student’s native language whenever possible.
- If the student has received academic instruction in his/her native language, as well as English, then the “Domains to Assess” need to be completed in both languages to the appropriate extent.

Additionally, personnel involved in the evaluation process of ELLs for dyslexia need to be trained in bilingual assessment and interpretation procedures.

Interpretation:

To appropriately understand test results, the examiner(s)/committee of knowledgeable persons **must** interpret test results in light of the student’s: language development (in both English and the student’s native language), educational history, linguistic background, socioeconomic issues, and any other pertinent factors that affect learning.

4. Identification of Students With Dyslexia

A team or committee of knowledgeable persons determines whether the student has dyslexia. The team must be knowledgeable about the following:

- The student being assessed;
- The reading process;
- Dyslexia and related disorders;
- Dyslexia instruction;
- District or charter school, state, and federal guidelines for assessment;
- The assessments used;
- The meaning of the collected data.

A committee of knowledgeable persons determines the identification of dyslexia after reviewing all accumulated data including the following areas:

- The observations of the teacher, district or charter school staff, and/or parent/guardian;
- Data gathered from the classroom (including student work and the results of classroom measures) and information found in the student’s cumulative folder (including the developmental and academic history of the student);
- Data-based documentation of student progress during instruction/intervention;
- The results of administered assessments;
- Language Assessment Proficiency Committee (LPAC) documentation, when applicable;

- All other accumulated data regarding the development of the student's learning and his/her educational needs.

The student's difficulties in the area of reading will reflect one or more of the primary characteristics of dyslexia with unexpectedly low performance for the student's age and educational level in the following areas:

- Reading real words in isolation;
- Decoding nonsense words;
- Reading fluency (both rate and accuracy);
- Written spelling (an isolated difficulty in spelling would not be sufficient to identify dyslexia).

This unexpectedly low reading performance will be the result of a deficit in phonological processing, including the following:

- Phonological awareness;
- Rapid naming;
- Phonological memory.

Many students with dyslexia will have difficulty with the secondary characteristics of dyslexia, including **reading comprehension** and **written composition**.

A committee of knowledgeable persons must also incorporate the following guidelines as authorized by TEC §38.003 and 19 TAC §74.28:

- The student has received conventional (appropriate) instruction;
- The student has an unexpected lack of appropriate academic progress (in the areas of reading and spelling);
- The student has adequate intelligence (an average ability to learn in the absence of print or in other academic areas);
- The student exhibits characteristics associated with dyslexia;
- The student's lack of progress is not due to sociocultural factors such as language differences, irregular attendance, or lack of experiential background.

Based on the above information and guidelines, the committee of knowledgeable persons determines whether the student has dyslexia. If the student has dyslexia, the committee of knowledgeable persons also determines whether the student has a disability under the Rehabilitation Act of 1973, §504. Not all students with dyslexia are automatically eligible for §504. A student is considered to have a disability under §504 if the condition substantially limits the student's learning. Students with additional factors that complicate their dyslexia may require additional support or referral to special education.

III. Referral to Special Education

At any time during the assessment for dyslexia, identification process, or instruction related to dyslexia, students may be referred for evaluation for special education. At times, students will display additional factors/areas complicating their dyslexia and requiring more support than what is available through dyslexia instruction. At other times, students with severe dyslexia or related disorders will be unable to make adequate academic progress within any of the programs described in the procedures related to dyslexia. In such cases, a referral to special education for evaluation and possible identification as a child with a disability within the meaning of the Individuals with Disabilities Education Act of 2004 (IDEA) (20 U.S.C. section 1400 et seq.) should be made as needed.

If the student with dyslexia is found eligible for special education in the area of reading, the admission, review, and dismissal (ARD) committee **must include appropriate reading instruction on the student's Individualized Education Program (IEP). Appropriate reading instruction includes the descriptors listed in Chapter IV on Instruction for Students with Dyslexia.**

If a student with dyslexia is referred for special education, districts and charter schools follow the Individuals with Disabilities Education Act (IDEA). In IDEA, §1401 (30), dyslexia is considered one of a variety of etiological foundations for “specific learning disability.” 34 CFR 300.8(c)(10) states that a “specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disability, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

IV. Instruction for Students with Dyslexia

Once it has been determined that a student has dyslexia, the school district or charter school shall provide an appropriate instructional program for the student. As stated in TEC §38.003:

In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.

The following procedures must be followed:

- Instructional decisions for a student with dyslexia are made by a team that is knowledgeable about the student, the meaning of the evaluation information, and instructional components and approaches for students with dyslexia.
- School districts and charter schools shall purchase a reading program or develop their own reading program for students with dyslexia and related disorders, as long as the program is characterized by the descriptors found in this handbook. The descriptors include the components of phonemic awareness, graphophonemic knowledge, language structure, linguistic patterns, and processes (19 TAC §74.28). Instructional approaches include explicit, individualized, and multi-sensory instruction (19 TAC §74.28). The components of instruction and instructional approaches are described in the next section of this handbook.
- Each school must provide each identified student access at his/her campus to the services of a teacher trained in dyslexia and related disorders. The school district may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus (19 TAC §74.28).
- Parents/guardians of students eligible under the Rehabilitation Act of 1973, §504, must be informed of all services and options available to the student under that federal statute.
- Teachers who provide the appropriate instruction for students with dyslexia must be trained in instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components specified in the next section of this handbook (19 TAC §74.28).
- Teachers who provide the appropriate instruction for students with dyslexia must be trained in the professional development activities specified by each district, charter school, and/or campus planning and decision making committee (19 TAC §74.28).

Districts and charter schools shall provide a parent education program for the parents/guardians of students with dyslexia and related disorders. The program should include:

- Characteristics of dyslexia and related disorders;
- Information on assessment and diagnosis of dyslexia;
- Information on effective strategies for teaching students with dyslexia;
- Awareness of information on classroom modifications and especially of modifications allowed on standardized testing (19 TAC §74.28).

Components of Instruction

The instructional program should be offered in a small class setting and include reading, writing, and spelling as appropriate. The major instructional strategies should utilize individualized, intensive, and multisensory methods as appropriate.

Components of instruction, as appropriate for the reading needs of the student, include the following:

- Phonemic awareness instruction that enables students to detect, segment, blend, and manipulate sounds in spoken language;
- Graphophonemic knowledge (phonics) instruction that takes advantage of the letter-sound plan in which words that carry meaning are made of sounds and sounds are written with letters in the right order. Students with this understanding can blend sounds associated with letters into words and can separate words into component sounds for spelling and writing;
- Language structure instruction that encompasses morphology (the study of meaningful units of language such as prefixes, suffixes, and roots), semantics (ways that language conveys meaning), syntax (sentence structure), and pragmatics (how to use language in a particular context);
- Linguistic instruction directed toward proficiency and fluency with the patterns of language so that words and sentences are the carriers of meaning;
- Strategy-oriented instruction in the strategies students use for decoding, encoding, word recognition, fluency, and comprehension that students need to become independent readers.

Instructional approaches, as appropriate to meet the instructional needs of the student, include:

- Explicit, direct instruction that is systematic (structured), sequential, and cumulative. Instruction is organized and presented in a way that follows a logical sequential plan, fits the nature of language (alphabetic principle) with no assumption of prior skills or language knowledge, and maximizes student engagement. This instruction proceeds at a rate commensurate with students' needs, ability levels, and demonstration of progress;

- Individualized instruction that meets the specific learning needs of each individual student in a small group setting; a reading curriculum that matches each student’s individual ability level and contains all of the *Components of Instruction* mandated in 19 TAC §74.28;
- Intensive, highly concentrated instruction that maximizes student engagement, uses specialized methods and materials, produces results, and contains all the *Components of Instruction* mandated in 19 TAC §74.28;
- Meaning-based instruction that is directed toward purposeful reading and writing, with an emphasis on comprehension and composition;
- Multisensory instruction that incorporates the simultaneous use of two or more sensory pathways (auditory, visual, kinesthetic, tactile) during teacher presentations and student practice.

Teachers of students with dyslexia shall be prepared to utilize these techniques and strategies. They may also serve as trainers and consultants in the area of dyslexia and related disorders to regular, remedial, and special education teachers.

The following are some “best practices” related to the instruction provided to students with dyslexia and the training recommended for the teachers of these students:

Components of Instruction:

Source: National Reading Panel. (2000). *Report of the National Reading Panel: Teaching children to read, an evidence-based assessment of the scientific research literature on reading and its implications for reading instruction*. Washington, DC: National Institute of Child Health and Human Development.

- Emphasis is placed on the importance of identifying early which children are at risk for reading failure and intervening quickly to help them.
- **How** reading is taught matters—reading instruction is most effective when it is taught comprehensively, systematically, and explicitly.

Source: Shaywitz, S. (2003). *Overcoming dyslexia: A new and complete science-based program for reading problems at any level*. New York: Alfred A Knopf.

Essentials of a successful reading intervention:

- **Early intervention:** The best intervention begins in kindergarten with remediation beginning in first grade (257).
- **Intense instruction:** “Reading instruction must be delivered with great intensity ... Optimally, a child who is struggling to read should be given instruction in a group of three and no larger than four students, and the child should receive this specialized reading instruction at least four, and preferably five, days a week” (258).

- **High-quality instruction:** “High-quality instruction is provided by a highly qualified teacher. Recent studies highlight the difference that a teacher can make in the overall success or failure of a reading program” (258).
- **Sufficient duration:** “One of the most common errors in teaching a student with dyslexia to read is to withdraw prematurely the instruction that seems to be working. A child who is reading accurately but not fluently at grade level still requires intensive reading instruction” (259).

The essentials of an effective **early intervention** program are:

- *Systematic and direct instruction in:*
 - *Phonemic awareness—noticing, identifying, and manipulating the sounds of spoken language*
 - *Phonics—how letters and letter groups represent the sounds of:*
 - Spoken language*
 - Sounding out words (decoding)*
 - Spelling*
 - Reading sight words*
 - Vocabulary and concepts*
 - Reading comprehension strategies*
- *Practice in applying the above skills in reading and in writing*
- *Fluency training*
- *Enriched language experiences: listening to, talking about, and telling stories (262).*

Source: Torgesen, J. K. (2004). *Lessons learned from research on interventions for students who have difficulty learning to read*. In P. McCardle & V. Chhabra (Eds.), *The voice of evidence in reading research* (pp. 355–382). Baltimore: Brookes.

- “The first implication for practice and educational policy is that schools must work to provide preventive interventions to eliminate the enormous reading practice deficits that result from prolonged reading failure” (376).
- “The second implication is that schools must find a way to provide interventions for older children with reading disabilities that are *appropriately focused and sufficiently intensive*” (376).

Source: Moats, L.C. (1999). *Teaching reading is rocket science* (Item No. 39-0372). Washington, DC: American Federation of Teachers.

Well designed, controlled comparisons of instructional approaches have consistently supported these components and practices in reading instruction:

- *Direct teaching of decoding, comprehension, and literature appreciation;*
- *Phoneme awareness instruction;*

- *Systematic and explicit instruction in the code system of written English;*
- *Daily exposure to a variety of texts, as well as incentives for children to read independently and with others;*
- *Vocabulary instruction that includes a variety of complementary methods designed to explore the relationships among words and the relationships among word structure, origin, and meaning;*
- *Comprehension strategies that include prediction of outcomes, summarizing, clarification, questioning, and visualization; and*
- *Frequent writing of prose to enable a deeper understanding of what is read (7–8).*

Source: Vaughn, S., & Linan-Thompson, S. (2003). *Group size and time allotted to intervention*. In B. Foorman (Ed.), *Preventing and remediating reading difficulties* (pp. 275–298). Parkton, MD: York Press.

- “Mounting evidence suggests that most students with reading problems can make significant gains in reading if provided systematic, explicit, and intensive reading instruction based on critical elements associated with improved reading such as phonemic awareness, phonics, fluency in word recognition and text reading, and comprehension” (299).
- “There were no statistically significant differences between students receiving intervention instruction in a teacher to student ratio of 1:1 or 1:3 though both groups outperformed students in a 1:10 teacher to student ratio” (320).
- “Student progress determined the length of intervention” (320).

Source: Clark, D., & Uhry, J., (Eds.) (2004). *Dyslexia: Theory and practice of instruction* (3rd ed.). Austin: Pro-Ed.

- Children with dyslexia need:
 - “Direct, intensive, and systematic input from, and interaction with, the teacher” (89);
 - “Immediate feedback from the teacher” (90);
 - “Careful pacing of instruction” (90);
 - “Systematic, structured progression from the simple to the complex” (91).
- Other components of instruction include:
 - “Learning to mastery” (91);
 - “Multisensory instruction” (92).

Source: August, D., and Shanahan, T., (Eds.) (2006). *Executive summary, Developing literacy in second-language learners: Report of the National Literacy Panel on language-minority children and youth*. Mahwah: Lawrence Erlbaum Associates.

- Major findings of the panel:
 - “Instruction that provides substantial coverage in the key components of reading—identified by the National Reading Panel (NICHD, 2000) as phonemic awareness, phonics, fluency, vocabulary, and text comprehension—has clear benefits for language-minority students” (3).
 - “Instruction in the key components of reading is necessary—but not sufficient—for teaching language-minority students to read and write proficiently in English. Oral proficiency in English is critical as well—but student performance suggests that it is often overlooked in instruction” (4).
 - “Oral proficiency and literacy in the first language can be used to facilitate literacy development in English” (5).

Teacher Training:

Source: Moats, L. C. (1999). *Teaching reading is rocket science* (Item No. 39-0372). Washington, DC: American Federation of Teachers.

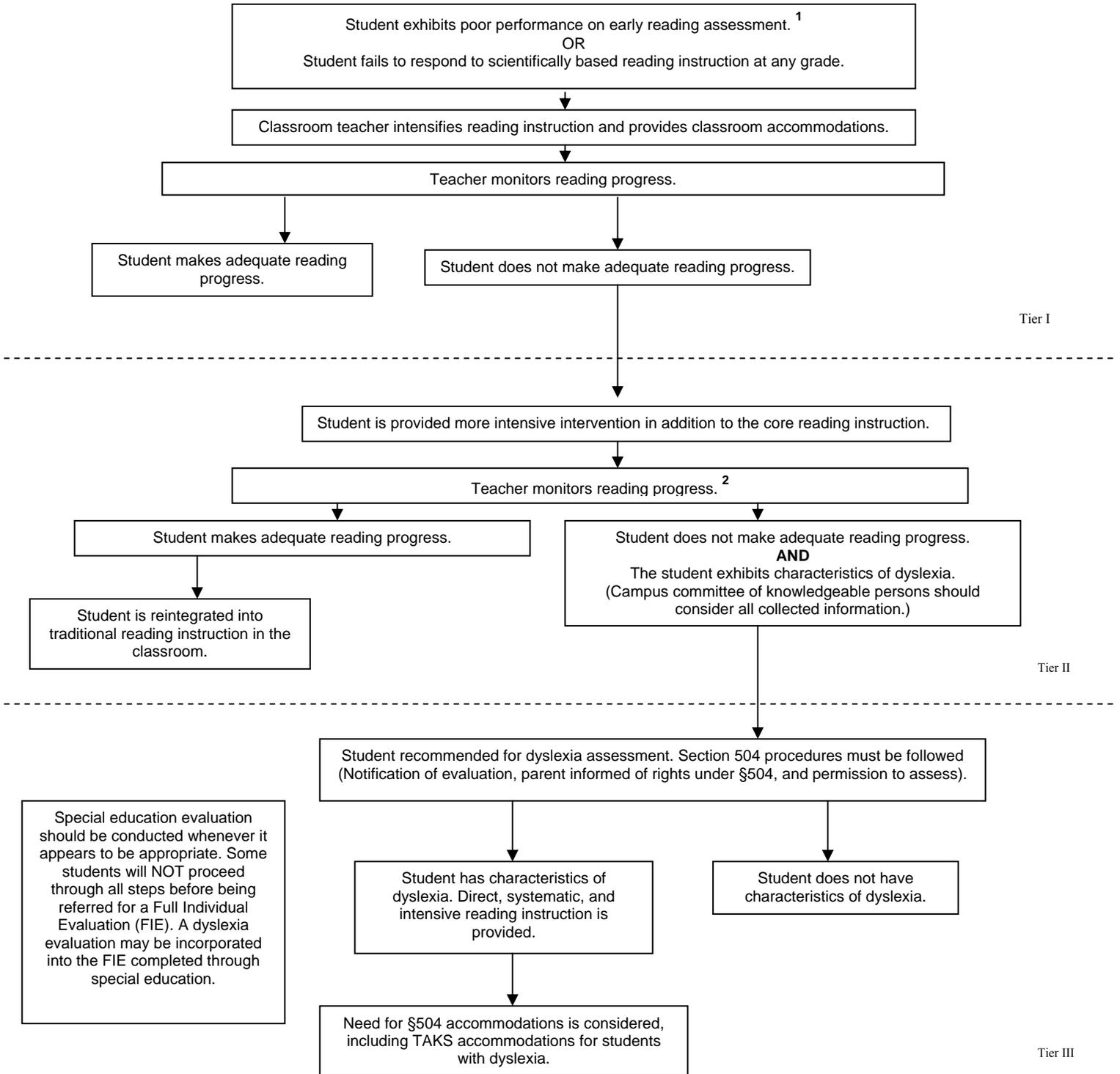
The knowledge and skills needed to teach reading include:

- The psychology of reading and reading development:
 - Basic facts about reading
 - The characteristics of poor and novice readers
 - Environmental and physiological factors in reading development
 - How reading and spelling develop;
- Knowledge of the language structure:
 - Phonology
 - Phonetics
 - Morphology
 - Orthography
 - Semantics
 - Syntax and text structure;
- Practical skills of instruction
 - Use of validated instructional practices;
- Assessment of classroom reading and writing skills.

See Appendix G: Contacts for further information.

Appendix A: Pathway to the Identification and Provision of Instruction for Students with Dyslexia

This flow chart illustrates a process for determining the instructional support needed by students with dyslexia.



¹ Parents (or guardians) of students in K–2 will be notified if the student is determined to be at risk for dyslexia or other reading difficulties (TEC §28.006).

² Parents (or guardians) may request dyslexia assessment or special education evaluation at any time.

Appendix B: Districts Implementing a Response to Intervention Model

The Individuals with Disabilities Education Act (IDEA) of 2004 indicates that states must permit the use of a process based on a child's response to scientific, research-based intervention as one of the criteria for determining whether a child has a learning disability. The research base for a response to intervention model is strongest at the elementary level, where large-scale implementation has been occurring for many years.

Core principles of response to intervention (RTI) as described in National Association of State Directors of Special Education (2005). *Response to intervention: Policy considerations and implementation*. Alexandria, VA: Author.

Core principles of RTI include:

- The assumption and belief that all children can learn.
- Early intervention for students who demonstrate risk for reading disabilities.
- Use of a multitiered model of service delivery. (To achieve high rates of student success, instruction must be differentiated in both nature and intensity.)
- Use of a problem-solving or standard-protocol method to make decisions within a multitier model.
- Use of research-based, scientifically validated interventions/instruction to the extent available.
- Monitoring of student progress to inform instruction.
- Use of data to make decisions. A data-based decision regarding student response to intervention is central to RTI practices.

The process described in this section is for students who struggle in the area of reading and exhibit characteristics of dyslexia.

Tier I: Core Classroom Reading Instruction

Tier I should involve the use of a scientifically based core instructional program for all students; a universal screening in essential academic areas to identify each student's level of proficiency (three times per year); and teachers' use of flexible grouping to target specific skills and differentiate instruction for at-risk students. Ongoing assessment of progress and monitoring of reading achievement gains are required for students identified as at risk, based on the universal screening.

Tier II: Intervention

Tier II is designed to meet the needs of students who do not respond to the scientifically based core reading instruction provided in the regular classroom setting. These students should be provided intensive small group reading instruction. The reading intervention should be scientifically based, emphasizing the five essential components of early literacy (i.e., phonemic awareness, phonics, fluency, vocabulary, and comprehension [NRP, 2000]). Progress monitoring at least twice a month on targeted skills should occur to ensure adequate progress and learning. Goals for students should be established. Progress monitoring data should be documented. Students who meet set criteria on targeted skills as

a result of Tier II interventions are reintegrated into the traditional instructional program or regular classroom setting (Tier I). If at any time during the student's Tier II intervention or after receiving Tier II intervention (maximum of 10 weeks), the student's progress in the essential components of reading warrants continued intervention **AND** the student demonstrates characteristics associated with dyslexia, the student should be recommended for a formal assessment of dyslexia.

Tier III: Intensive Instruction

Note: Prior to Tier III instruction, students who exhibit the characteristics of dyslexia should be formally assessed.

A small percentage of students who have received Tier II supplemental instruction continue to show marked difficulty in acquiring necessary reading skills. These students require instruction that is more explicit, more intensive, and specifically designed to meet their individual needs. Some of these students may be students with dyslexia. Students who meet identification through formal assessment as a student with dyslexia should receive small group dyslexia instruction using a program characterized by the descriptors found in this handbook. Progress monitoring at least twice a month on targeted skills should occur to ensure adequate progress and learning.

Information on the 3-Tier Reading Model and RTI was compiled from the following sources:

Vaughn Gross Center for Reading and Language Arts at The University of Texas at Austin (2005). *Introduction to the 3-Tier Reading Model: Reducing reading disabilities for kindergarten through third grade students* (4th ed.). Austin, TX: Author.

National Association of State Directors of Special Education. (2005). *Response to intervention: Policy considerations and implementation*. Alexandria, VA: Author.

Appendix C: Sources of Laws and Rules for Dyslexia Identification and Instruction

- **Texas Education Code (TEC) §38.003**
- **Texas Education Code (TEC) §28.006**
- **Texas Education Code (TEC) §7.028(b)**
- **Texas Administrative Code (TAC) §74.28 (State Board of Education Rule)**
- *The Dyslexia Handbook – Revised 2007: Procedures Concerning Dyslexia and Related Disorders*
- **Rehabilitation Act of 1973 – Section 504 (§504)**
- **Individuals with Disabilities Education Act (IDEA)**
- **TAKS Accommodations for Students with Dyslexia (Bundled Accommodations)**

Based on the TEA document *The Dyslexia Handbook – Revised 2007: Procedures Concerning Dyslexia and Related Disorders*

School Boards MUST:

- Ensure that procedures for identifying a student with dyslexia or a related disorder are implemented in the district (TAC §74.28).
- Ensure that procedures for providing appropriate instructional services to the student are implemented in the district (TAC §74.28).
- Ensure that the district or school complies with all applicable requirements of state educational programs (TEC §7.028).

Districts MUST:

- Administer K–2 assessments (TEC §28.006).
- Provide early identification, intervention, and support (TEC §28.006).
- Apply results of early assessment instruments to instruction and report to the Commissioner of Education (TEC §28.006).
- Implement procedures for students with dyslexia and related disorders according to State Board of Education strategies (i.e., Dyslexia Handbook) (TAC §74.28).
- Provide training of educators about dyslexia (TEC §28.006).
- Ensure the procedures for identification and instruction are in place (TAC §74.28).
- Test for dyslexia at appropriate times (TEC §38.003).
- Meet the requirements of Section 504 when assessment for dyslexia is recommended (Dyslexia Handbook).
- Provide treatment (instruction) for students with dyslexia (TEC §38.003).
- Purchase or develop their own programs that include descriptors listed in the state handbook (TAC §74.28).
- Notify parents in writing before an assessment or identification procedure is used with an individual student (TAC §74.28).
- Inform parents of all services and options available to students eligible under the Rehabilitation Act of 1973, Section 504 (TAC §74.28).
- Provide student with services of a teacher trained in dyslexia (TAC §74.28).

- Provide a parent education program (TAC §74.28).

Checklist of procedures to follow to ensure compliance with State Dyslexia Laws/Code:

- Notify parents or guardians of proposal to assess student for dyslexia (§504).
- Inform parents or guardians of their rights under Section 504.
- Obtain parent or guardian permission to assess the student for dyslexia.
- Administer measures using only individuals/professionals who are trained in assessment to evaluate students for dyslexia and related disorders (19 TAC §74.28).
- Ensure identification of dyslexia is made by a committee that includes persons knowledgeable about the reading process, dyslexia and dyslexia instruction, the assessments used, and the meaning of the collected data.
- Provide dyslexia instruction as per TEC §38.003 (instruction is provided regardless of student eligibility for §504).

Checklist of written documentation that is recommended to ensure compliance with Section 504:

- Documentation that the notice of evaluation has been given to parents or guardians.
- Documentation that parents or guardians were given their rights under Section 504.
- Documentation of the parent's or guardian's consent for the evaluation (Letter to Durham. 27 IDELR 380 [OCR 1997]).
- Documentation of the evaluation data.
- Documentation of the decisions made by the committee of knowledgeable persons concerning the disability (whether a disability exists) and, if a disability exists, whether the disability substantially limits a major life activity.
- Documentation of the placement options and placement decisions.

Appendix D: State Statutes Related to Dyslexia

Texas Education Code §38.003 (State Law)

§38.003. Screening and Treatment for Dyslexia and Related Disorders

- (a) Students enrolling in public schools in this state shall be tested for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education.
- (b) In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.
- (c) The State Board of Education shall adopt any rules and standards necessary to administer this section.
- (d) In this section:
 - (1) “Dyslexia” means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.
 - (2) “Related disorders” includes disorders similar to or related to dyslexia, such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Texas Education Code §28.006 (State Law)

§28.006. Reading Diagnosis

- (a) The commissioner shall develop recommendations for school districts for:
 - (1) Administering reading instruments to diagnose student reading development and comprehension;
 - (2) Training educators in administering the reading instruments; and
 - (3) Applying the results of the reading instruments to the instructional program.
- (b) The commissioner shall adopt a list of reading instruments that a school district may use to diagnose student reading development and comprehension. A district-level committee established under Subchapter F, Chapter 11, may adopt a list of reading instruments for use in the district in addition to the reading instruments on the commissioner’s list. Each reading instrument adopted by the commissioner or a district-level committee must be

based on scientific research concerning reading skills development and reading comprehension. A list of reading instruments adopted under this subsection must provide for diagnosing the reading development and comprehension of students participating in a program under Subchapter B, Chapter 29.

- (c) Each school district shall administer, at the kindergarten and first- and second-grade levels, a reading instrument on the list adopted by the commissioner or by the district-level committee. The district shall administer the reading instrument in accordance with the commissioner's recommendations under Subsection (a)(1).
- (d) The superintendent of each school district shall:
 - (1) Report to the commissioner and the board of trustees of the district the results of the reading instruments; and
 - (2) Report, in writing, to a student's parent or guardian the student's results on the reading instrument.
- (e) The results of reading instruments administered under this section may not be used for purposes of appraisals and incentives under Chapter 21 or accountability under Chapter 39.
- (f) This section may be implemented only if funds are appropriated for administering the reading instruments. Funds, other than local funds, may be used to pay the cost of administering a reading instrument only if the instrument is on the list adopted by the commissioner.
- (g) A school district shall notify the parent or guardian of each student in kindergarten or first or second grade who is determined, on the basis of reading instrument results, to be at risk for dyslexia or other reading difficulties. The district shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to those students and shall determine the form, content, and timing of that program. The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on a reading instrument under this section shall determine the manner in which the student will participate in an accelerated reading instruction program under this subsection.
- (h) The school district shall make a good faith effort to ensure that the notice required under this section is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English and in the parent or guardian's native language.
- (i) The commissioner shall certify, not later than July 1 of each school year or as soon as practicable thereafter, whether sufficient funds have been appropriated statewide for the purposes of this section. A determination by the commissioner is final and may not be appealed. For purposes of certification, the commissioner may not consider Foundation School Program funds.

- (j) No more than 15 percent of the funds certified by the commissioner under Subsection (i) may be spent on indirect costs. The commissioner shall evaluate the programs that fail to meet the standard of performance under Section 39.051(b)(7) and may implement sanctions under Subchapter G, Chapter 39. The commissioner may audit the expenditures of funds appropriated for purposes of this section. The use of the funds appropriated for purposes of this section shall be verified as part of the district audit under Section 44.008.
- (k) The provisions of this section relating to parental notification of a student's results on the reading instrument and to implementation of an accelerated reading instruction program may be implemented only if the commissioner certifies that funds have been appropriated during a school year for administering the accelerated reading instruction program specified under this section.

Text of subsection (l) effective until January 1, 2002.

(l), (m) Expired.

Added by Acts 1997, 75th Leg., ch. 397, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 396, § 2.11, eff. Sept. 1, 1999.

Texas Education Code §7.028(b) (State Law)

§7.028. Limitation on Compliance Monitoring

- (b) The board of trustees of a school district or the governing body of an open-enrollment charter school has primary responsibility for ensuring that the district or school complies with all applicable requirements of state educational programs.

Added by Acts 2003, 78th Leg., ch. 201, § 4, eff. Sept. 1, 2003.
Renumbered from V.T.C.A., Education Code § 7.027 by Acts 2005, 79th Leg., ch. 728, § 23.001(9), eff. Sept. 1, 2005.

Texas Administrative Code §74.28 (State Board of Education Rule)

§74.28. Students with Dyslexia and Related Disorders

- (a) The board of trustees of a school district must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate instructional services to the student are implemented in the district. These procedures will be monitored by the Texas Education Agency (TEA) with on-site visits conducted as appropriate.
- (b) A school district's procedures must be implemented according to the State Board of Education (SBOE) approved strategies for screening, and techniques for treating, dyslexia and related disorders. The strategies and techniques are described in "Procedures Concerning Dyslexia and Related Disorders," a set of flexible guidelines for local districts that may be modified by SBOE only with broad-based dialogue that includes input from educators and professionals in the field of reading and dyslexia and related disorders from

across the state. Screening should be done only by individuals/professionals who are trained to assess students for dyslexia and related disorders.

- (c) A school district shall purchase a reading program or develop its own reading program for students with dyslexia and related disorders, as long as the program is characterized by the descriptors found in “Procedures Concerning Dyslexia and Related Disorders.” Teachers who screen and treat these students must be trained in instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in the “Procedures Concerning Dyslexia and Related Disorders” and in the professional development activities specified by each district and/or campus planning and decision making committee.
- (d) Before an identification or assessment procedure is used selectively with an individual student, the school district must notify the student’s parent or guardian or another person standing in parental relation to the student.
- (e) Parents/guardians of students eligible under the Rehabilitation Act of 1973, §504, must be informed of all services and options available to the student under that federal statute.
- (f) Each school must provide each identified student access at his or her campus to the services of a teacher trained in dyslexia and related disorders. The school district may, with the approval of each student’s parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus.
- (g) Because early intervention is critical, a program for early identification, intervention, and support for students with dyslexia and related disorders must be available in each district as outlined in the “Procedures Concerning Dyslexia and Related Disorders.”
- (h) Each school district shall provide a parent education program for parents/guardians of students with dyslexia and related disorders. This program should include: awareness of characteristics of dyslexia and related disorders; information on testing and diagnosis of dyslexia; information on effective strategies for teaching dyslexic students; and awareness of information on modification, especially modifications allowed on standardized testing.

Source: The provisions of this §74.28 adopted to be effective September 1, 1996, 21 TexReg 4311; amended to be effective September 1, 2001, 25 TexReg 7691; amended to be effective August 8, 2006, 31 TexReg 6212.

Appendix E: Accommodations

Texas Student Assessment Program Accommodations

A testing accommodation is a change to the testing environment to assist a student with special needs so that assessment can mirror classroom instruction as much as possible without invalidating test results. Some testing accommodations that are utilized for classroom or district level tests (e.g., reduction in the number of test items) may not be appropriate for use on state tests. Only test accommodations that do not cause test results to be invalid may be used with state tests.

The decision to use a particular accommodation with a student should be made on an individual basis and should take into consideration (a) the needs of the student and (b) whether the student routinely receives the accommodation in classroom instruction. For additional information about allowable and nonallowable testing accommodations for state tests, contact the Texas Education Agency, Student Assessment Division, at 512-463-9536; www.tea.state.tx.us/student.assessment.

Dyslexia Accommodations—State Reading Assessment

In spring of 2004, a study (Fletcher, Francis, Copeland, Young, Kalinowski, & Vaughn) was conducted to evaluate the effects of a series of accommodations on the performance of elementary students with dyslexia on the Texas Assessment of Knowledge and Skills (TAKS) reading test. The study focused on three accommodations that might benefit these students on the state reading test:

- Orally reading all proper nouns associated with each passage before students began individual reading,
- Orally reading all questions and answer choices to students, and
- Extending the testing time over a two-day period.

These three accommodations were “bundled.” That is, the purpose of the study was not to determine which accommodation was most effective but whether these bundled accommodations “leveled the playing field” for students who had been identified with dyslexia or who had a severe reading disability that caused them to have difficulty reading words in isolation. The study found that these three accommodations provided appropriate support for this population of students without creating an unfair advantage or invalidating their reading performance on the test.

As a result of the 2004 study and a subsequent research study, the three bundled accommodations are now available for students in grades 3, 4, 5, 6, 7, and 8 who meet the eligibility requirements listed. These accommodations can be used to administer the TAKS reading test in English and Spanish at grades 3–6, including all three Student Success Initiative (SSI) opportunities at grades 3 and 5, and the TAKS reading tests in English at

grades 7–8. The dyslexia accommodations may also be used for all three SSI test opportunities offered at grade 8 beginning with the 2007–2008 school year.

The test administrator must administer the reading test using all three accommodations as a “bundled” package. Students should be tested individually or in small groups.

Fletcher, J. M., Francis, D. J., Boudousquie, A., Copeland, K., Young, V., Kalinowski, S., & Vaughn, S. (2005). Effects of accommodations on high-stakes testing for students with reading disabilities. *Exceptional Children*, 72(2), 136–150.

Eligibility Requirements

A student who meets the following criteria is eligible to receive the set of three bundled accommodations on the English and Spanish TAKS reading tests at grades 3, 4, 5, and 6, and in English at grades 7 and 8.

- A student **not receiving special education services** must be identified with dyslexia; **or**
- A student **receiving special education services** must either be identified with dyslexia or have a severe reading disability that exhibits the characteristics of dyslexia, causing the student to lack word-identification skills and to have difficulty reading words in isolation; **and**
- The student must routinely receive accommodations in classroom instruction and testing that address the difficulties he/she has reading words in isolation.

Authority for Decision

For a student with dyslexia not receiving special education services who meets both criteria listed, the decision to provide the bundled accommodations must be made either by the student’s placement committee as required by §504 of the Rehabilitation Act of 1973 and documented by the school in the student’s Individual Accommodation Plan (IAP) or by the committee of knowledgeable persons as outlined in *The Dyslexia Handbook – Revised 2007*. In the latter case, the committee’s decision must be documented in writing in appropriate school records.

For a student receiving special education services who meets both criteria listed, the decision to provide the bundled accommodations must be made by the student’s admission, review, and dismissal (ARD) committee and documented in the student’s Individualized Education Program (IEP).

Administration instructions can be found in the *TAKS District and Campus Coordinator Manual* and in the relevant test administration manuals. For additional information about the bundled accommodations, contact the Texas Education Agency, Student Assessment Division at 512-463-9536; www.tea.state.tx.us/student.assessment.

Oral Administration

An oral administration is allowable only for the state assessments in mathematics, science, and social studies. It is **not allowed** for the reading, writing, or English language arts tests.

Only examinees served by special education or §504 or who have been identified as having dyslexia may receive an oral administration of TAKS.

Classroom Accommodations

A student with dyslexia may require accommodations in the classroom setting. The most common and needed accommodations are extended time for reading due to the student's lack of fluency and not penalizing the student for spelling errors on assignments without time for editing, since dyslexia directly affects spelling. Depending on the student's individual needs, additional accommodations may be necessary.

Resource for classroom accommodations

International Dyslexia Association – Fact Sheet #51:

Accommodating Students with Dyslexia in All Classroom Settings

www.interdys.org/fact%20sheets/Accommodations%20FS%20N.pdf

Appendix F: Questions and Answers

The following questions and answers relate to various topics important to dyslexia and related disorders.

Relationship of Dyslexia to the Rehabilitation Act of 1973, §504

1 How does §504 affect the way school districts and charter schools implement the state dyslexia law and the State Board of Education rules and procedures?

- If a student is suspected of having a disability within the scope of the Individuals with Disabilities Education Act (IDEA), all special education procedures must be followed. IDEA procedures meet the requirements of §504.
 - If a student is not suspected of having a disability within the scope of IDEA, he/she may still have a disability within the scope of §504. Such a student must be assessed, evaluated, and provided an education that meets the individual needs of the student as adequately as the students without disabilities are served in the district or charter school. At times, such nondiscrimination requires the provision of special services or modifications of programs to enable the student to benefit from the education that is offered to him/her. (The most familiar example is the provision of a ramp for students using wheelchairs.) Following the dyslexia guidelines in this handbook ensures attention to the special needs of a student with dyslexia who is considered disabled under §504. Particular attention must be paid to the procedural and appeal provisions of §504.
 - When students are singled out for individualized assessment, the procedures for assessing students for dyslexia must be carried out within the requirements of §504, including notification of parents/guardians; opportunity for parents/guardians to examine relevant records; use of valid measures; and evaluation and placement by a team of persons knowledgeable about the student, meaning of the evaluation data, and placement options. The steps taken to comply with §504 should be documented in writing.
-

2 Is every student suspected of having dyslexia “disabled” within the meaning of §504?

No, not in all cases. To be a person with a disability within the meaning of §504, the student must have a disability that is substantially limiting, affects a major life activity (such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working [34 CFR 104.3(j)]), and affects the student’s education. Thus a student with dyslexia may be considered to have a disability within the scope of §504 if the condition substantially limits the student’s learning.

3 What written documentation is recommended to ensure compliance with §504?

It is recommended that districts and charter schools document the following in writing in the event that an Office for Civil Rights investigation is initiated by a formal complaint:

- Documentation that the notice of evaluation has been given to parents or guardians.
- Documentation that parents or guardians were given their rights under Section 504.
- Documentation of the parent or guardian's consent for the evaluation (Letter to Durham. 27 IDELR 380 [OCR 1997]).
- Documentation of the evaluation data.
- Documentation of the decisions made by the committee of knowledgeable persons concerning the disability (whether a disability exists) and, if a disability exists, whether the disability substantially limits a major life activity.
- Documentation of the placement options and placement decisions.

The intent of this recommended documentation is to ensure that a district or charter school meets the needs of students and protects the rights of students and parents or guardians.

4 What procedural protections are provided to parents or guardians who may not agree with the decisions made by a district or charter school?

- If the student is suspected of having a disability within the scope of IDEA, the procedural protections provided for in that law and the corresponding rules for implementation apply.
- If the student is not suspected of having a disability within the scope of IDEA, then the procedural protections of §504 may apply. Under §504, parents or guardians may file a request for a hearing with the school district or charter school. The school district or charter school must appoint as an impartial hearing officer a person who is not an employee and has no other conflict of interest. At the hearing, there must be opportunity for participation by the parents or guardians and, if desired, by counsel for the parents or guardians. Decisions of the hearing officer may be appealed to state or federal court.

Texas Education Code, Texas Administrative Code, and State Board of Education Rules and Procedures

5 What is the difference between the State Board of Education’s rule and procedures?

The State Board of Education rule requires school districts and charter schools to follow *The Dyslexia Handbook – Revised 2007: Procedures Concerning Dyslexia and Related Disorders*. The procedures, as stated in this dyslexia handbook, are guidelines developed to assist districts and charter schools in complying with state and federal laws.

6 What are the responsibilities of a school district or charter school in implementing the state dyslexia law?

Every school district and charter school must collect pertinent data for any student suspected of having dyslexia or a related disorder. (See Chapter II, Procedures for Assessing Students for Dyslexia.) A committee of persons knowledgeable about the student must review the relevant data and determine whether the student has dyslexia. If the student is identified with dyslexia, then the committee uses the data to determine instructional needs specific to the individual student. The district or charter is responsible for ensuring that dyslexia instructional services are provided directly on the student’s campus. If a parent or guardian receives assessment information related to their child’s reading difficulties from a private individual or entity, the district or charter school must consider the information if provided by the parent or guardian. However, the district or charter school must follow state law, rule and procedures, as well as local dyslexia policy, to make the final determination of student eligibility for dyslexia and related disorders.

7 What are the responsibilities of the local school board in implementing the state dyslexia law?

According to Texas Education Code (state law) section §7.028(b) the local school board or board of trustees for each school district and charter school is responsible for ensuring compliance with state law, rule, and procedures for dyslexia services in their district.

8 What monies may be used to support the dyslexia program?

State foundation funds, state compensatory funds, title funds, or local funds may be used. State compensatory and title funds are used to supplement the regular classroom instruction. For students whose disability warrants special education services, special education funds may be used to provide direct and indirect services to students who are eligible for special education and related services. However, IDEA 2004 has identified that a local education agency (LEA) **may** use up to 15% of its IDEA B entitlement for early intervention services for any child who is experiencing difficulty. These funds are to be used as supplementary funds and should not be used to supplant local, state, or other federal program dollars. This funding flexibility may be a supplemental funding option for early dyslexia interventions.

Assessment Recommendation

9 When is a student who is experiencing reading difficulties to be considered for placement in an instructional program for dyslexia and related disorders?

See Chapter II of this handbook for information related to procedures that are required by state and federal law prior to a formal assessment of a student experiencing reading difficulties. If a student is not progressing in the general, remedial, and/or compensatory reading programs in school and other causes have been eliminated, the student should be recommended for assessment to determine whether he/she has dyslexia or a related disorder.

10 Should all students be routinely reviewed for dyslexia?

TEC §28.006 requires school districts or charter schools to administer, at the kindergarten, first- and second-grade levels, a reading instrument and to notify the parent or guardian of each student in kindergarten, first or second grade who is determined, on the basis of the reading instrument results, to be at risk for dyslexia or other reading difficulties. Additionally, data related to the reading achievement and progress of all students should be continuously monitored and reviewed. A recommendation for assessment for dyslexia is made only for a student who has not adequately responded to scientifically based classroom reading instruction as well as intensive intervention AND who exhibits the primary characteristics of dyslexia. An additional consideration when monitoring a student's reading skills is a poor reading performance that is unexpected for the student.

11 May a parent or guardian recommend that a student be assessed for dyslexia?

Yes. A parent or guardian may request to have his/her child assessed for dyslexia or a related disorder by staff at the district or charter school. Additionally, a parent or guardian may choose to have his/her child assessed by a private diagnostician or other source. To be valid, this assessment must comply with the requirements set forth in §504 and the guidelines in this handbook (Chapter II, Procedures for Assessing Students with Dyslexia). The district or charter school must consider information provided by the parent or guardian when interpreting evaluation data and making placement decisions. However, the district or charter school determines whether the student is eligible for services for dyslexia and/or related disorders.

12 Must a student fail a class or subject before being recommended for assessment for dyslexia?

According to TEC §38.003, students should be assessed for dyslexia at appropriate times. One of these times is when a student fails the Texas Assessment of Knowledge and Skills (TAKS) test. At this point, the committee of knowledgeable persons should bypass the Tier I step in the response to intervention process and, under Tier II, gather data as listed in Chapter II, Procedures for Assessing Students with Dyslexia, 1. Data Gathering. The campus dyslexia specialist must be part of this committee and involved in the decision-making process. Data gathering must have been completed before the decision-making process begins so that a decision to assess or not to assess can be accurately determined. If a decision not to assess is made, then the committee of knowledgeable persons needs to determine the appropriate interventions and/or accommodations to utilize to assist the student's progress under Tier II of the response to intervention process.

13 Can a student be considered for assessment of dyslexia even if he/she has passed a test required by the Texas State Assessment program?

Yes. Results from a state test, required by the Texas State Assessment program, are only one source of data to be gathered and considered for possible recommendation for assessment. Other information must also be considered such as: teacher information, report card grades, parent information, history of reading difficulties, informal observations of the student's abilities, response to scientifically based reading instruction, etc.

14 To whom should the student be referred if there is a problem with speech or language development?

The normal special education referral procedures should be followed. For students identified as disabled under IDEA, a speech pathologist usually provides services for students with identified language/speech problems in accordance with the decisions of the admission, review, and dismissal (ARD) committee.

15 Should the parent or guardian be notified if a district or charter school plans to evaluate a student for dyslexia or a related disorder?

Yes. Notice of the recommendation to assess the student for dyslexia must be given to the parent or guardian prior to any individualized assessment. Parental consent for individualized assessment is necessary before the assessment process begins. In addition, notice of §504 due process rights must be provided to the parent or guardian at this time. The notices and consent must be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless it is clearly not feasible to do so.

16 Is there one test that can be used to determine that a student has dyslexia or a related disorder?

No. Districts and charter schools should use multiple data sources, including formal and informal measures that are appropriate for determining whether a student has dyslexia or a related disorder. Reading assessments, as appropriate for the reading development of the student, should include the following:

- Reading real and nonsense words in isolation (decoding);
- Phonological awareness;
- Letter knowledge (name and associated sound);
- Rapid naming;
- Reading fluency (rate and accuracy);
- Reading comprehension;
- Written spelling.

17 Is it necessary to record assessment results and data collected on special forms?

No. Assessment results and data are usually recorded in a student's cumulative folder. Although there is no uniform or required format for this record keeping, it is important that school districts and charter schools keep this information in *writing* to ensure that they meet the needs of their students, protect the rights of students and their parents or guardians, and to provide documentation should the Office for Civil Rights investigate a formal complaint.

18 Who administers a dyslexia assessment to a student receiving special education services?

The Dyslexia Handbook – Revised 2007 contains two references related to who is qualified to assess for dyslexia:

- 19 TAC §74.28 indicates that assessment should only be done by individuals/professionals who are trained to assess students for dyslexia and related disorders.
- §504 requires that tests, assessments, and other evaluation materials be administered by trained personnel and in conformance with the instructions provided by the producer of the evaluation materials.

A local education agency (LEA) can determine in its policies and procedures who will conduct the dyslexia assessment. In some cases it may be the dyslexia teacher; in other cases it may be an educational diagnostician or a Licensed Specialist in School Psychology (LSSP).

Identification of a Student with Dyslexia

19 Who ultimately identifies the student as dyslexic and makes the placement decision?

The identification must be made by a committee of knowledgeable persons formed at the district, charter school, or campus level. This team should include two or more of the following individuals: the superintendent, a principal, a counselor, a reading specialist, a dyslexia specialist, a speech and language pathologist, an educational diagnostician, a special education teacher, and a teacher or other professional educator. If the student is limited English proficient (LEP), the team should also include a member of the Language Proficiency

Assessment Committee (LPAC). The team must be knowledgeable about the student being assessed; reading; dyslexia and related disorders; dyslexia instruction; district or charter school, state, and federal guidelines for assessment; the assessments that were used; and the meaning of the collected data. In addition, it is suggested that the parents or guardians of the student be a part of this process.

This answer does not necessarily apply to students covered by IDEA. If a student is covered by IDEA, the placement decision would be made by the student's admission, review, and dismissal (ARD) committee, which should also include members of the committee of knowledgeable persons previously described for students with dyslexia.

20 What factors must the committee consider before placing a student into a dyslexia program?

Identification must be determined based on the following:

- The student has not made adequate academic progress in the areas of reading;
- The student has demonstrated average ability to learn in the absence of print and/or in other academic areas;
- The student has the characteristics of dyslexia or a related disorder.

The student's reading difficulties will reflect one or more of the primary characteristics of dyslexia with unexpectedly low performance for the student's age and educational level in:

- Reading real words in isolation;
- Decoding nonsense words;
- Reading fluency (both rate and accuracy);
- Written spelling.

This unexpectedly low reading performance will be the result of a deficit in phonological processing, including:

- Phonological awareness;
- Rapid naming;
- Phonological memory.

Many students with dyslexia will have difficulty with the secondary characteristics of dyslexia, including:

- Reading comprehension;
- Written composition.

The following factors must NOT be used as the sole reason to identify a student for a dyslexia program:

- The student's primary language is not English;
- The student has irregular attendance;
- The student lacks experiential background;
- The student has had a brain injury, disease, or surgery that interferes with learning.

21 Must an intelligence test be administered in the identification process for dyslexia?

No. The most current definition of dyslexia from the International Dyslexia Association (IDA) indicates that the difficulties the student exhibits in reading should be **unexpected** in relation to the student's other cognitive abilities **and** the provision of effective classroom instruction. Examples of other cognitive abilities that could be age appropriate in relation to unexpected reading difficulties might include the student's oral language skills, his/her ability to learn in the absence of print, or strong math skills in comparison to reading skills.

22 Question 21 refers to “unexpected in relation to the provision of effective classroom instruction.” How does this apply to assessment?

It is important to have documentation regarding the student's instructional history. Was the student exposed to scientifically based reading instruction in the classroom? Was the student identified as at risk? If so, was the student provided with accelerated (intensive) intervention? Is there documentation of the student's progress? These questions are important to the data-gathering process prior to or during assessment. A student cannot be identified with dyslexia if there are questions as to whether the student was exposed to appropriate instruction.

Instruction

23 Must each campus have a dyslexia program?

Yes. In accordance with 19 TAC §74.28(f), each school must provide each student identified with dyslexia access at his/her campus to the services of a teacher trained in dyslexia and related disorders. The school district may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his/her campus.

24 Must each campus offer appropriate dyslexia instruction for students identified as having dyslexia at each grade level (grades 1 through 12)?

Yes. All students identified with dyslexia must receive reading instruction that is appropriate for their literacy needs. The instruction must match the descriptors in this handbook and, as appropriate for the student, contain reading, writing, and spelling components.

25 May a parent or guardian refuse services for a student identified with dyslexia?

Yes. A parent or guardian may refuse appropriate instructional services for a student identified with dyslexia even when those services are offered during the instructional school day. The local education agency (LEA) may want to document in writing a decision made by the parent or guardian to decline services. For a student receiving services through special education, due process procedures outlined by the Individuals with Disabilities Education Act (IDEA) would apply.

26 What is the difference between instruction for students with dyslexia who are in general education and students with dyslexia who are in special education?

There may or may not be a difference in instruction. In this handbook, Chapter IV, Instruction for Students with Dyslexia, describes the reading instruction that must be in place to serve students identified with dyslexia. Students who qualify for special education have an Individualized Education Program (IEP) developed by the admission, review, and dismissal (ARD) committee. For students with dyslexia who qualify for special education, the IEP must include, as appropriate, the reading instruction that matches the descriptors found in Chapter IV of this handbook, Instruction for Students with Dyslexia.

School districts and charter schools must ensure that students who participate in special education services are not denied access to programs on the basis of their disability. To the extent appropriate, the student must be educated in the least restrictive setting with nondisabled peers and have instruction that enables the student to participate and progress in the general curriculum. This means that students who are eligible for special education who also meet the Texas identification criteria for dyslexia and related disorders:

- Must have an IEP that provides access to instructional programs in reading and written language that comply with the State Board of Education rules and procedures concerning dyslexia and related disorders;
- May not be denied access to the district's or charter school's programs for students with dyslexia, unless the ARD committee determines such a program

would deny the student a free appropriate public education (FAPE) and educational benefit;

- Must have the ARD committee consider the range of services available for students with dyslexia in determining the least restrictive educational placement for the student.

27 How long should a student remain in a remedial program or in an instructional program designed for students with dyslexia and related disorders?

The local district or charter school should, as with any alternative program, establish criteria for exit. Even after exit, the student, in order to be successful, may require some continuing supports in the general program. Under §504, the district or charter school must provide those supports or related aids and services. Additionally, the campus may want to routinely monitor the progress of the student to be sure that the student maintains successful reading performance.

28 How is instruction for dyslexia different than other reading instruction?

The Dyslexia Handbook – Revised 2007 lists and describes the components of instruction that must be a part of a program utilized for students identified with dyslexia. Teachers (general education or special education) who provide instruction for students with dyslexia must have training in the listed components of instruction as well as be trained in instructional strategies that utilize individualized, intensive, and multisensory methods (see Instruction for Students with Dyslexia, Chapter IV in *The Dyslexia Handbook – Revised 2007*).

29 May a computer program be used as the primary method of delivery for a dyslexia instructional program?

No. Computer instruction to teach reading is not supported by scientifically based reading research. The National Reading Panel (2000), in its review of the research related to computer technology and reading instruction, indicated that it is extremely difficult to make specific instructional conclusions based on the small sample of research available and that there are many questions that still need to be addressed.

Teachers of Students with Dyslexia

30 What certification should teachers of students with dyslexia and related disorders have?

Teachers of students with dyslexia and related disorders must have valid Texas teaching certificates for the particular grade level(s) that they teach. Teachers with coursework in the areas of reading and reading disabilities should be considered first for assignment to teach students with dyslexia and related disorders. These teachers should be trained to deliver instruction that is described in Chapter IV of this handbook. Those who are certified educational aides, per Texas Administrative Code guidelines, may perform assigned tasks under the guidance and supervision of a certified teacher or teaching team.

31 How does a teacher in general or special education become trained to serve students with dyslexia?

Teachers must be trained to deliver instruction that is described in Chapter IV of *The Dyslexia Handbook – Revised 2007*. As stated in 19 TAC §74.28, teachers who provide appropriate instruction for students with dyslexia must be trained and be prepared to implement instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components. These teachers must also be trained in the professional development activities specific to dyslexia as specified by each district, charter school, and/or campus planning and decision-making committee.

Relationship Between Dyslexia and Special Education

32 If a student is currently receiving special education services and is then identified as needing additional services for dyslexia, does the admission, review, and dismissal (ARD) committee need to document in the ARD Report: (a) the dyslexia identification process; (b) the instruction specific to dyslexia?

- (a) The admission, review, and dismissal (ARD) committee should document that the student has been identified with dyslexia or that the student has a reading disability that exhibits characteristics consistent with dyslexia. Since there are instructional implications as well as accommodations on the state assessment program for students who have been identified with dyslexia, the dyslexia identification should be noted in the ARD Report.
- (b) For students with dyslexia who qualify for special education in the area of reading, the ARD committee **must** include appropriate reading instruction on the student's IEP.

Appropriate reading instruction includes the descriptors found in Chapter IV of *The Dyslexia Handbook – Revised 2007*.

- 33** **If a student is already receiving special education services for one particular area of need (e.g., speech), does the ARD committee need to convene to recommend that the student be assessed for dyslexia, or can this recommendation to assess for dyslexia be made informally following general education procedures without a meeting of the ARD committee?**

For any student receiving special education services, including a student receiving speech services, special education procedures **must** be followed. The ARD committee and other qualified professionals, as appropriate, must review existing evaluation data on the student and on the basis of that review, and input from the student’s parents or guardians, identify what additional data, if any, are needed to make an informed decision regarding identification of dyslexia. The ARD committee may conduct its review without a meeting. If further assessment is recommended, the parent or guardian must receive notice of assessment and procedural safeguard rights (when appropriate), and give consent for the evaluation according to the requirements by the IDEA. A timeline for completion of the evaluation should be determined by the ARD committee.

- 34** **Who provides dyslexia instruction to a student receiving special education services?**

Chapter IV (Instruction for Students with Dyslexia) of *The Dyslexia Handbook – Revised 2007* indicates that teachers who provide appropriate instruction for students with dyslexia must be trained in instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components.

- 35** **Who determines the content of the dyslexia instruction for a student who is also receiving special education services?**

Chapter III (Referral to Special Education) of *The Dyslexia Handbook – Revised 2007* states: If the student with dyslexia is found eligible for special education in the area of reading, the ARD committee must include appropriate reading instruction on the student’s IEP. Appropriate reading instruction includes the descriptors listed in the chapter on Instruction for Students with Dyslexia.

-
- 36** **May the educational diagnostician or Licensed Specialist in School Psychology (LSSP) use the same diagnostic data that was gathered for the Individuals with Disabilities Education Act (IDEA) identification process to identify a student with dyslexia? Must the determination of dyslexia be made by a separate committee of knowledgeable persons or the admission review and dismissal (ARD) committee?**
-

The educational diagnostician or LSSP may use the same diagnostic data gathered for the IDEA identification process as long as the data includes assessment information from the domains listed in *The Dyslexia Handbook – Revised 2007* to be a part of the identification of dyslexia.

The determination of dyslexia is made by a multidisciplinary team composed of members who are knowledgeable about dyslexia and the reading process as indicated in Chapter II of *The Dyslexia Handbook – Revised 2007*. For purposes of a student who is currently receiving special education services, the ARD committee serves as the multidisciplinary team described above and should include members with the additional knowledge of dyslexia, dyslexia evaluation, and interventions required by Chapter IV of *The Dyslexia Handbook – Revised 2007*.

-
- 37** **What additional training does an educational diagnostician or LSSP need to have in order to assess a student for dyslexia?**
-

No additional training is needed; however, the assessment professional needs to have an understanding of dyslexia, awareness of the domains to assess for dyslexia, and the profile of strengths and weaknesses that is typically exhibited when a student has dyslexia. Texas Administrative Code §74.28 indicates that screening (assessment) should be done by individuals/professionals who are trained to assess students for dyslexia and related disorders.

-
- 38** **When a student is receiving special education services, may a general education teacher(s) assess for dyslexia versus having an educational diagnostician or LSSP assess?**
-

A general education teacher (preferably a dyslexia teacher or reading specialist) may assess for dyslexia if that is consistent with the local education agency (LEA) policies and procedures and he/she meets the qualifications indicated in 19 TAC §74.28 and §504 (see Question 18); however, the identification should be made by a committee of knowledgeable persons. For a student receiving special education services this committee would be the ARD committee, including member(s) who are knowledgeable about dyslexia and the reading process as indicated in Chapter II of *The Dyslexia Handbook – Revised 2007*.

-
- 39** How do we prevent duplication or conflict of services for a student identified for both special education and dyslexia services (e.g., if a student is receiving instruction in one method with his/her dyslexia teacher and a different method with his/her special education teacher)?
-

The appropriate teachers for a student who is receiving reading instruction through both special education and general education dyslexia should coordinate the services offered to this student. This collaboration model should include all teachers, both general education and specialized teachers, who teach reading (including reading in the content area) to ensure generalization of the methodology identified as the reading intervention. The admission, review, and dismissal (ARD) committee has the ultimate responsibility for consistency of methodology. The ARD committee will also need to determine the most appropriate environment for the student to receive the instruction (see answer to Question 40).

- 40** What considerations need to be given to “least restrictive environment” when determining dyslexia services for a student also receiving special education services (e.g., a special education dyslexia program offered in a resource class vs. a dyslexia program offered outside the special education class)?
-

The least restrictive environment (LRE) means that students with disabilities are educated with peers who are nondisabled to the maximum extent appropriate, and special classes, separate schooling, or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

For any student receiving special education services, including a student identified with dyslexia, the placement decision is made by a group of persons including the parents or guardians and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options (the ARD committee); and is made in conformity with the LRE provisions of the IDEA. The child’s placement is determined at least annually and is based on the child’s IEP.

English Language Learners

41 How many years does a student need to receive ESL/bilingual instruction before assessment for dyslexia can be considered?

There is no fixed amount of time that an English language learner must receive ESL/bilingual instruction before assessment for dyslexia is considered, because to set a specific amount of time might lead to a critical delay of services for eligible students who are at risk. A student demonstrating reading and writing difficulties who is being considered for assessment for dyslexia, however, must first have been provided with consistent and appropriate academic instruction in reading and writing, and academic instruction should have been in the language that allowed the student to have had access to the instruction.

42 What determines the language of instruction for dyslexia services related to an English language learner (ELL)?

To determine the language of instruction of dyslexia services for an English language learner, the committee of knowledgeable persons should take the following two issues into account:

- (1) What language allows the student to adequately access the dyslexia services?
 - (2) What is the student's current language of classroom instruction?
-

43 What are some resources for further information regarding English language learners?

- Texas Education Agency: www.tea.state.tx.us/curriculum/biling/
- Education Service Centers: Bilingual/ESL contacts (See Appendix G)
- National Association for Bilingual Education (NABE): www.nabe.org/
- Teachers of English to Speakers of Other Languages (TESOL): www.tesol.org
- Center for Applied Linguistics (CAL): www.cal.org
- Reading Rockets/Colorín Colorado: A free, Web-based, service that provides information, activities, and advice for educators and Spanish-speaking families of English language learners (ELLs): www.colorincolorado.org

Texas State Assessment Program Accommodations for Students with Dyslexia (Bundled Accommodations)

- 44** Does a student have to routinely receive these three specific accommodations (orally reading proper nouns; orally reading comprehension questions and answer choices; and having extended time) as a bundled group in the classroom?
-

A student may, but does not have to, receive all three accommodations as a bundle during *classroom* instruction and testing. However, in both of these instances a student should routinely receive accommodations related to his/her difficulties with decoding words in isolation. For example, the teacher may read directions orally, help with unfamiliar vocabulary, or provide extended time for reading assignments.

- 45** May a student who is being monitored or who has been exited from a dyslexia program be considered for the dyslexia bundled accommodations?
-

If a student has been receiving dyslexia services and has made sufficient progress in word-reading skills so that accommodations in classroom instruction or testing are no longer required, the student **would not** be eligible. However, if after exiting a program, a student continues to need accommodations in classroom instruction and testing for reading difficulties at the isolated word level, then the student **would** be eligible for the bundled accommodations.

- 46** Is the provision of a second day to complete the reading test optional?
-

No. Extending the test over a two-day period is required. Research findings have indicated that students who need these accommodations require two days because of the fatigue factor associated with the student's reading difficulties at the isolated word level. The test administrator will stop the reading test approximately halfway through, following the directions included in the TAKS Test Administrator Manual provided by the Texas Education Agency, Student Assessment Division. The student will complete the reading test on the second day of administration.

Appendix G: Contacts for Further Information

Education Service Center Dyslexia Contacts

For more information about dyslexia services, contact your regional Education Service Center. When you call, ask for the dyslexia contact for your region.

Region 1	1900 W. Schunior Edinburg, TX 78539-2234 (956) 984-6000 Fax (956) 984-6299	Region 2	209 North Water Street Corpus Christi, TX 78401-2599 (361) 561-8400 Fax (361) 883-3442
Region 3	1905 Leary Lane Victoria, TX 77901-2899 (361) 573-0731 Fax (361) 576-4804	Region 4	7145 West Tidwell Houston, TX 77092-2096 (713) 462-7708 Fax (713) 744-6514
Region 5	2295 Delaware Street Beaumont, TX 77703-4299 (409) 838-5555 Fax (409) 833-9755	Region 6	3332 Montgomery Road Huntsville, TX 77340-6499 (936) 435-8400 Fax (936) 295-1447
Region 7	1909 N. Longview Street Kilgore, TX 75662-6827 (903) 988-6700 Fax (903) 988-6735	Region 8	P.O. Box 1894 Mt. Pleasant, TX 75456-1894 (903) 572-8551 Fax (903) 575-2611
Region 9	301 Loop 11 Wichita Falls, TX 76306-3706 (940) 322-6928 Fax (940) 767-3836	Region 10	P.O. Box 831300 Richardson, TX 75083-1300 (972) 348-1700 Fax (972) 231-3642
Region 11	3001 North Freeway Fort Worth, TX 76106-6596 (817) 740-3600 Fax (817) 740-7600	Region 12	P.O. Box 23409 Waco, TX 76702-3409 (254) 297-1212 Fax (254) 666-0823
Region 13	5701 Springdale Road Austin, TX 78723-3675 (512) 919-5313 Fax (512) 919-5374	Region 14	1850 State Hwy. 351 Abilene, TX 79601-4750 (325) 675-8600 Fax (325) 675-8659
Region 15	P.O. Box 5199 San Angelo, TX 76902-5199 (325) 658-6571 Fax (325) 658-6571	Region 16	5800 Bell Street Amarillo, TX 79109-6230 (806) 677-5000 Fax (806) 677-5001
Region 17	1111 West Loop 289 Lubbock, TX 79416-5029 (806) 792-4000 Fax (806) 792-1523	Region 18	P.O. Box 60580 Midland, TX 79711-0580 (432) 563-2380 Fax (432) 567-3290
Region 19	P.O. Box 971127 El Paso, TX 79997-1127 (915) 780-1919 Fax (915) 780-6537	Region 20	1314 Hines Avenue San Antonio, TX 78208-1899 (210) 370-5200 Fax (210) 370-5750

State and Federal Contacts

For more information about state dyslexia regulations, contact:

State Dyslexia Consultant
Region 10 Education Service Center
400 E. Spring Valley Road
Richardson, TX 75083-1300
1-800-232-3030
www.region10.org

Director of Reading
Texas Education Agency
Division of Curriculum
1701 N. Congress Avenue
Austin, TX 78701-1494
(512) 463-9581
www.tea.state.tx.us
www.tea.state.tx.us/curriculum/elar/index.html

For more information regarding the Rehabilitation Act of 1973, §504, contact:

The Office for Civil Rights/Department of Education
Dallas Regional Office/Region VI (Arkansas, Louisiana, Mississippi, Texas)
1999 Bryan Street, Suite 1620
Dallas, Texas 75201
(214) 661-9600
Fax (214) 661-9587

Organizations

Note: This is **NOT** a TEA-endorsed list but is intended to provide additional sources for information about dyslexia and related disorders.

<p>ALLIANCE The Alliance for Accreditation and Certification 8600 LaSalle Road Chester Building, Suite 382 Baltimore, MD 21286-2044 (410) 296-0232 Fax (410) 321-5069 www.allianceaccreditation.org</p>	<p>ALTA Academic Language Therapy Association 14070 Proton Road, Suite 100, LB9 Dallas, TX 75244 (972) 233-9107 ext. 201 Fax (972) 490-4219 HOPELINE 1-866-283-7133 www.ALTAread.org</p>
<p>Department of Pediatrics/University of Texas at Houston Children’s Learning Institute 7000 Fannin, UCT2400 Houston, TX 77030 (713) 500-3685 http://cli.uth.tmc.edu/</p>	<p>EDMAR Educational Associates MTS Publications P.O. Box 2 Forney, TX 75126-0002 (877) 552-1090 (toll free) Fax (972) 552-9889 www.mtsedmar.com</p>
<p>IDA International Dyslexia Association 8600 LaSalle Road Chester Building, Suite 382 Baltimore, MD 21286-2044 (800) ABCD-123 (toll free) Fax (410) 321-5069 www.interdys.org</p>	<p>IMSLEC International Multisensory Structured Language Education Council 15720 Hillcrest Road Dallas, TX 75248 (972) 774-1772 Fax (972) 386-7140 www.imslec.org</p>
<p>IRA International Reading Association P.O. Box 8139 Newark, DE 19714-8139 (800) 336-READ (toll free) Fax (302) 731-1057 www.reading.org</p>	<p>LDA Learning Disabilities Association of America 4156 Library Road Pittsburgh, PA 15234 (412) 341-1515 Fax (412) 344-0224 www.ldanatl.org</p>
<p>LDAT Learning Disabilities Association of Texas 1011 West 31st Street Austin, TX 78705 (512) 458-8234 (800) 604-7500 (Texas residents only) Fax (512) 458-3826 www.ldat.org</p>	<p>LEAD* Literacy Education & Academic Development, Inc. P.O. Box 262 Argyle, TX 76226 (940) 464-3752 Fax (940) 464-7293 www.leadabcd.com</p>
<p>NCLD National Center for Learning Disabilities 381 Park Avenue South, Suite 1401 New York, NY 10016 (888) 575-7373 (toll free) Fax (212) 545-9665 www.nclld.org</p>	<p>Neuhaus Education Center* 4433 Bissonnet Bellaire, TX 77401 (713) 664-7676 Fax (713) 644-4744 www.neuhaus.org</p>

<p>RFB&D Recording for the Blind and Dyslexic 20 Roszel Road Princeton, NJ 08540 (866) 732-3585 www.rfbd.org</p>	<p>RFB&D Recording for the Blind & Dyslexic/Texas 1314 West 45th Street Austin, TX 78756 (512) 323-9390 (877) 246-7321 (toll free) Fax (512) 323-9399 http://www.rfbd.org/Texas_Unit.htm</p>
<p>Scottish Rite Learning Center of Austin, Inc.* 1622 E. Riverside Austin, TX 78741 (512) 472-1231 Fax (512) 326-1877 http://www.scottishritelearningcenter.org</p>	<p>Scottish Rite Learning Center of West Texas* P.O. Box 10135 Lubbock, TX 79408 (806) 765-9150 Fax (806) 765-9564 www.lubbockscottishrite.org</p>
<p>Southern Methodist University Learning Therapy Program* 5236 Tennyson Parkway Building 4, Suite 108 Plano, TX 75024 (214) 768-7323 Fax (972) 473-3442 www.smu.edu/learning_therapy</p>	<p>Southwest Multisensory Learning Center* 600 S. Jupiter Road Allen, TX 75002 (972) 359-6646 Fax (972) 359-8291 www.southwestacademy.org/training.htm</p>
<p>Texas Scottish Rite Hospital for Children Luke Waites Center for Dyslexia and Learning Disorders* 2222 Welborn Street Dallas, TX 75219-9813 (214) 559-7815 Fax (214) 559-7808 www.tsrhc.org</p>	<p>The Shelton School* 15720 Hillcrest Road Dallas, TX 75248 (972) 774-1772 Fax (972) 991-3977 www.shelton.org</p>
<p>TSRA Texas State Reading Association P.O. Box 150218 Austin, TX 78715-0218 (877) 306-5274 Fax (512) 295-4805 www.tsra.us</p>	

*International Multisensory Structured Language Education Council (IMSLEC)-accredited training center.

Appendix H: Associated Terms

Accelerated reading instruction: intensified, research-based reading instruction that addresses the student’s reading needs that were determined by the results of the K–2 reading instruments (TEC §28.006). This intensive, research-based instruction is provided for students determined to be at risk for dyslexia or other reading difficulties. The district or charter school determines the form, content, and timing of the intensive instruction that is designed to meet students’ needs (e.g., instruction in phonemic awareness, alphabetic principle, word-analysis strategies, fluency, and/or reading comprehension).

Accommodation: changing or altering the learning environment, materials, delivery method, or number of answers. Accommodations/changes should not be made to the state curriculum standards known as the Texas Essential Knowledge and Skills (TEKS) student expectations.

Adaptive behavior: the effectiveness in which the student meets the standards of personal independence and social responsibility expected of his or her age and cultural group.

Alphabetic principle: the understanding that the sequence of letters in written words represents the sequence of sounds (or phonemes) in spoken words.

“At risk” for dyslexia: students whose K–2 reading instrument (TEC §28.006) results indicate needs in the areas of reading and/or reading development. The students considered at risk are at the pre-identification level and are not identified as students with dyslexia at this time. These students must be provided accelerated reading instruction (intensive, research-based instruction that addresses the reading needs of the student).

Developmental dysgraphia: an inability to write legibly. This may occur in addition to other difficulties in written language. Visual-motor coordination skills are frequently within the average range and are not the primary cause of dysgraphia.

Developmental spelling disorder: significant difficulty learning to spell. This occurs in the absence of reading or other written language difficulties.

Differentiated instruction: to recognize students’ varying background knowledge, readiness, language, preferences in learning, and interests and to react responsively. Differentiated instruction is a process to approach teaching and learning for students of differing abilities in the same class. The intent of differentiating instruction is to maximize each student’s growth and individual success by meeting each student where he or she is and assisting in the learning process.

Dyslexia: specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge (International Dyslexia Association, 2002).

Evaluation: the use of multiple methods in evaluating a variety of data to guide establishment of appropriate interventions. For the identification of a student with dyslexia, the data for evaluation should include the teacher's observations, the developmental and academic history of the student, the results of a variety of reading assessments, and all other information relevant to the identification of dyslexia.

Explicit, direct instruction: instruction that is systematic (structured), sequential, and cumulative. Instruction is organized and presented in a way that follows a logical sequential plan, fits the nature of language (alphabetic principle) with no assumption of prior skills or language knowledge, and maximizes student engagement.

Fluency: the ability to read with speed, accuracy, and proper expression. Fluency is one of several critical factors necessary for reading comprehension.

Graphophonemic knowledge (phonics) instruction: instruction that takes advantage of the letter-sound plan in which words that carry meaning are made of sounds, and sounds are written with letters in the right order. Students with this understanding can blend sounds associated with letters into words and can separate words into component sounds for spelling and writing.

Individualized instruction: instruction that meets the specific learning needs of an individual student. Materials and methods are matched to each student's individual ability level.

Intervention: a change in instruction in the area of learning difficulty to improve performance and achieve adequate progress.

Language dominance: the language of the individual that is stronger and more developed.

Language proficiency: the level of skill in a language. Language proficiency is composed of oral (listening and speaking) and written (reading and writing) components as well as academic and non-academic language.

Language structure instruction: instruction that encompasses morphology, semantics, syntax, and pragmatics.

Linguistic instruction: instruction that is directed toward proficiency and fluency with patterns of language so that words and sentences are the carriers of meaning.

Meaning-based instruction: instruction that is directed toward purposeful reading and writing, with an emphasis on comprehension and composition.

Morpheme: a meaningful linguistic unit that cannot be divided into smaller meaningful elements, as the word *book*. A morpheme is also a component of a word, as *s* in *books*.

Morphology: the study of the structure and form of words in a language, including inflection, derivation, and the formation of compounds. Knowledge of morphemes facilitates decoding, spelling, and vocabulary development.

Multisensory instruction: instruction that incorporates the simultaneous use of two or more sensory pathways (auditory, visual, kinesthetic, tactile) during teacher presentation and student practice.

Phonemic awareness: the insight that spoken words can be conceived as a sequence of sounds; the ability to manipulate the sounds within words (e.g., segmenting or blending).

Phonics: instructional practices that emphasize how spelling is related to speech sounds in systemic ways; explicit instruction in letter-sound correspondences.

Phonology: the sound structure of speech and in particular the perception, representation, and production of speech sounds.

Progress monitoring: a scientifically based practice used to assess students' academic progress and/or performance and evaluate the effectiveness of instruction. Progress monitoring can be implemented with individual students or an entire class. Progress monitoring is a quick (less than five minutes) probe that is done frequently (weekly or biweekly) in order to make instructional changes in a timely fashion.

Recommendation for assessment for dyslexia: recommendation by the teacher, district, or charter school staff, and/or the parent or guardian that a student be assessed for dyslexia. Following the recommendation, the district or charter school must adhere to its written procedures and the procedures within the handbook.

Response to intervention (RTI): a multistep, or tiered, approach to providing services and interventions at increasing levels of intensity to students who struggle with learning. The progress students make at each stage of intervention is closely monitored. Results of this monitoring are used to make decisions about the need for further research-based instruction and/or intervention in general education, in specialized instructional settings, or both.

Scientifically based research: under the No Child Left Behind (NCLB) definition of "scientifically based," research must meet the following criteria:

- Employ systematic, empirical methods that draw on observation or experiment;
- Involve rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions;
- Rely on measurements or observational methods that provide valid data across evaluators and observers, and across multiple measurements and observations;
- Be accepted by a peer-reviewed journals or approved by a panel of independent experts through a comparatively rigorous, objective, and scientific review.

Strategy-oriented instruction: thoughtfully ordered step-by-step instruction in the strategies that students need to become independent readers, including strategies for decoding, encoding, word recognition, fluency, and comprehension.

Universal screening: a step taken by school personnel to determine which students are at risk for not meeting grade-level standards. Universal screening can be accomplished by administering an academic screening to all students in a given grade level. Students whose scores fall below a certain cutoff point are identified as needing closer monitoring or intervention.

Appendix I: Publications Related to Dyslexia

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Appendix J: Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities

U.S. Department of Education

Margaret Spellings

Secretary

Office for Civil Rights

James Manning

Delegated the Authority of Assistant Secretary

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U.S. Department of Education

Office for Civil Rights

Washington, D.C. 20202

May 2005

More and more high school students with disabilities are planning to continue their education in postsecondary schools, including vocational and career schools, two- and four- year colleges, and universities. As a student with a disability, you need to be well informed about your rights and responsibilities as well as the responsibilities that postsecondary schools have toward you. Being well informed will help ensure that you have a full opportunity to enjoy the benefits of the postsecondary education experience without confusion or delay.

The Office for Civil Rights (OCR) in the U.S. Department of Education is providing the information in this pamphlet to explain the rights and responsibilities of students with disabilities who are preparing to attend postsecondary schools. This pamphlet also explains the obligations of a postsecondary school to provide academic adjustments, including auxiliary aids and services, to ensure that the school does not discriminate on the basis of disability.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibit discrimination on the basis of disability. Practically every school district and postsecondary school in the United States is subject to one or both of these laws, which have similar requirements.*/

Because both school districts and postsecondary schools must comply with these same laws, you and your parents might believe that postsecondary schools and school districts have the same responsibilities. This is not true; the responsibilities of postsecondary schools are significantly different from those of school districts.

Moreover, you will have responsibilities as a postsecondary student that you do not have as a high school student. OCR strongly encourages you to know your responsibilities and those of postsecondary schools under Section 504 and Title II. Doing so will improve your opportunity to succeed as you enter postsecondary education.

The following questions and answers provide more specific information to help you succeed.

As a student with a disability leaving high school and entering postsecondary education, will I see differences in my rights and how they are addressed?

Yes. Section 504 and Title II protect elementary, secondary and postsecondary students from discrimination. Nevertheless, several of the requirements that apply through high school are different from the requirements that apply beyond high school. For instance, Section 504 requires a school district to provide a free appropriate public education (FAPE) to each child with a disability in the district's jurisdiction. Whatever the disability, a school district must identify an individual's education needs and provide any regular or special education and related aids and services necessary to meet those needs as well as it is meeting the needs of students without disabilities.

Unlike your high school, your postsecondary school is not required to provide FAPE. Rather, your postsecondary school is required to provide appropriate academic adjustments as necessary to ensure that it does not discriminate on the basis of disability. In addition, if your postsecondary school provides housing to nondisabled students, it must provide comparable, convenient and accessible housing to students with disabilities at the same cost.

Other important differences you need to know, even before you arrive at your postsecondary school, are addressed in the remaining questions.

May a postsecondary school deny my admission because I have a disability?

No. If you meet the essential requirements for admission, a postsecondary school may not deny your admission simply because you have a disability.

Do I have to inform a postsecondary school that I have a disability?

No. However, if you want the school to provide an academic adjustment, you must identify yourself as having a disability. Likewise, you should let the school know about your disability if you want to ensure that you are assigned to accessible facilities. In any event, your disclosure of a disability is always voluntary.

What academic adjustments must a postsecondary school provide?

The appropriate academic adjustment must be determined based on your disability and individual needs. Academic adjustments may include auxiliary aids and modifications to academic requirements as are necessary to ensure equal educational opportunity. Examples of such adjustments are arranging for priority registration; reducing a course load; substituting one course for another; providing note takers, recording devices, sign language interpreters, extended time for testing and, if telephones are provided in dorm rooms, a TTY in your dorm room; and equipping school computers with screen-reading, voice recognition or other adaptive software or hardware.

In providing an academic adjustment, your postsecondary school is not required to lower or effect substantial modifications to essential requirements. For example, although your school may be required to provide extended testing time, it is not required to change the substantive content of the test. In addition, your postsecondary school does not have to make modifications that would fundamentally alter the nature of a service, program or activity or

would result in undue financial or administrative burdens. Finally, your postsecondary school does not have to provide personal attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature, such as tutoring and typing.

If I want an academic adjustment, what must I do?

You must inform the school that you have a disability and need an academic adjustment. Unlike your school district, your postsecondary school is not required to identify you as having a disability or assess your needs.

Your postsecondary school may require you to follow reasonable procedures to request an academic adjustment. You are responsible for knowing and following these procedures. Postsecondary schools usually include, in their publications providing general information, information on the procedures and contacts for requesting an academic adjustment. Such publications include recruitment materials, catalogs and student handbooks, and are often available on school Web sites. Many schools also have staff whose purpose is to assist students with disabilities. If you are unable to locate the procedures, ask a school official, such as an admissions officer or counselor.

When should I request an academic adjustment?

Although you may request an academic adjustment from your postsecondary school at any time, you should request it as early as possible. Some academic adjustments may take more time to provide than others. You should follow your school's procedures to ensure that your school has enough time to review your request and provide an appropriate academic adjustment.

Do I have to prove that I have a disability to obtain an academic adjustment?

Generally, yes. Your school probably will require you to provide documentation that shows you have a current disability and need an academic adjustment.

What documentation should I provide?

Schools may set reasonable standards for documentation. Some schools require more documentation than others. They may require you to provide documentation prepared by an appropriate professional, such as a medical doctor, psychologist or other qualified diagnostician. The required documentation may include one or more of the following: a diagnosis of your current disability; the date of the diagnosis; how the diagnosis was reached; the credentials of the professional; how your disability affects a major life activity; and how the disability affects your academic performance. The documentation should provide enough information for you and your school to decide what is an appropriate academic adjustment.

Although an Individualized Education Program (IEP) or Section 504 plan, if you have one, may help identify services that have been effective for you, it generally is not sufficient documentation. This is because postsecondary education presents different demands than high school education, and what you need to meet these new demands may be different. Also in some cases, the nature of a disability may change.

If the documentation that you have does not meet the postsecondary school's requirements, a school official must tell you in a timely manner what additional documentation you need to provide. You may need a new evaluation in order to provide the required documentation.

Who has to pay for a new evaluation?

Neither your high school nor your postsecondary school is required to conduct or pay for a new evaluation to document your disability and need for an academic adjustment. This may mean that you have to pay or find funding to pay an appropriate professional to do it. If you are eligible for services through your state vocational rehabilitation agency, you may qualify for an evaluation at no cost to you. You may locate your state vocational rehabilitation agency through this Department of Education Web page: <http://www.ed.gov/about/offices/list/osers/rsa/index.html>

Once the school has received the necessary documentation from me, what should I expect?

The school will review your request in light of the essential requirements for the relevant program to help determine an appropriate academic adjustment. It is important to remember that the school is not required to lower or waive essential requirements. If you have requested a specific academic adjustment, the school may offer that academic adjustment or an alternative one if the alternative also would be effective. The school may also conduct its own evaluation of your disability and needs at its own expense.

You should expect your school to work with you in an interactive process to identify an appropriate academic adjustment. Unlike the experience you may have had in high school, however, do not expect your postsecondary school to invite your parents to participate in the process or to develop an IEP for you.

What if the academic adjustment we identified is not working?

Let the school know as soon as you become aware that the results are not what you expected. It may be too late to correct the problem if you wait until the course or activity is completed. You and your school should work together to resolve the problem.

May a postsecondary school charge me for providing an academic adjustment?

No. Furthermore, it may not charge students with disabilities more for participating in its programs or activities than it charges students who do not have disabilities.

What can I do if I believe the school is discriminating against me?

Practically every postsecondary school must have a person—frequently called the Section 504 Coordinator, ADA Coordinator, or Disability Services Coordinator—who coordinates the school's compliance with Section 504 or Title II or both laws. You may contact this person for information about how to address your concerns.

The school also must have grievance procedures. These procedures are not the same as the due process procedures with which you may be familiar from high school. However, the postsecondary school's grievance procedures must include steps to ensure that you may raise

your concerns fully and fairly and must provide for the prompt and equitable resolution of complaints.

School publications, such as student handbooks and catalogs, usually describe the steps you must take to start the grievance process. Often, schools have both formal and informal processes. If you decide to use a grievance process, you should be prepared to present all the reasons that support your request.

If you are dissatisfied with the outcome from using the school's grievance procedures or you wish to pursue an alternative to using the grievance procedures, you may file a complaint against the school with OCR or in a court. You may learn more about the OCR complaint process from the brochure *How to File a Discrimination Complaint with the Office for Civil Rights*, which you may obtain by contacting us at the addresses and phone numbers below, or at <http://www.ed.gov/ocr/docs/howto.html>.

If you would like more information about the responsibilities of postsecondary schools to students with disabilities, read the OCR brochure *Auxiliary Aids and Services for Postsecondary Students with Disabilities: Higher Education's Obligations Under Section 504 and Title II of the ADA*. You may obtain a copy by contacting us at the address and phone numbers below, or at <http://www.ed.gov/ocr/docs/auxaids.html>.

Students with disabilities who know their rights and responsibilities are much better equipped to succeed in postsecondary school. We encourage you to work with the staff at your school because they, too, want you to succeed. Seek the support of family, friends and fellow students, including those with disabilities. Know your talents and capitalize on them, and believe in yourself as you embrace new challenges in your education.

To receive more information about the civil rights of students with disabilities in education institutions, contact us at:

Customer Service Team
Office for Civil Rights
U.S. Department of Education
Washington, D.C. 20202-1100
Phone: 1-800-421-3481
TDD: 1-877-521-2172
Email: ocr@ed.gov
Web site: www.ed.gov/ocr

*/ You may be familiar with another federal law that applies to the education of students with disabilities—the Individuals with Disabilities Education Act (IDEA). That law is administered by the Office of Special Education Programs in the Office of Special Education and Rehabilitative Services in the U.S. Department of Education. The IDEA and its Individualized Education Program (IEP) provisions do not apply to postsecondary schools. This pamphlet does not discuss the IDEA or state and local laws that may apply

U.S. Department of Education, Office for Civil Rights, *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities*, Washington, D.C., 2005.

Appendix K: Rehabilitation Act of 1973, Section 504 (Federal Law)

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- 104.46 Financial and employment assistance to students.

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- 104.54 Education of institutionalized persons.

Subpart G—Procedures

§104.61 Procedures.

APPENDIX A TO PART 104—ANALYSIS OF FINAL REGULATION

APPENDIX B TO PART 104—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

[NOTE]

AUTHORITY: 20 U.S.C. 1405; 29 U.S.C. 794.

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Subpart A—General Provisions

§104.1 Purpose.

The purpose of this part is to effectuate Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

§104.3 Definitions.

As used in this part, the term:

(a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) *Section 504* means Section 504 of the Act.

(c) *Education of the Handicapped Act* means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) *Department* means the Department of Education.

(e) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department of Education.

(f) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) *Handicapped person*. (1) "Handicapped person" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

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

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

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under Section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services;

(l) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§104.4 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.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

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

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

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to

participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will

obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§104.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of Section 504 or this part, the recipient

shall take such remedial action, as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of Section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) A list of the interested persons consulted (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of Section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§104.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment

and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§104.12 Responsible accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§104.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§104.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a pre-employment medical examination or may not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), or

when a recipient is taking affirmative action pursuant to section 503 or the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided, That:*

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided, That:* (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§104.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made

available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§104.23 New construction.

(a) *Design and construction.* Each facility or part of a 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 CFR subparts 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. 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.

(2) For purposes of this section, Section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical

rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(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.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980; 55 FR 52138, 52141, Dec. 19, 1990]

Subpart D—Preschool, Elementary, and Secondary Education

§104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education.* (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a

recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

§104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services and activities of the recipient.

§104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of

handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services, which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of Section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§104.37 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) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 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.

§104.38 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.

§104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.

APPENDIX A TO PART 104--ANALYSIS OF FINAL REGULATION

SUBPART A—GENERAL PROVISIONS

Definitions. 1. *Recipient* Section 104.23 contains definitions used throughout the regulation.

One comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded

programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing Title VI and Title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of 104.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs.

2. *Federal financial assistance.* In 104.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under Section 503. The Department has never considered such contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that Section 504, unlike Title VI and Title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended Section 504 to have a broader application, in terms of federal financial assistance, than other civil rights statutes. Indeed, Congress directed that Section 504 be implemented in the same manner as Titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under Title VI, we think it unlikely that Congress intended Section 504 to apply to such contracts.

3. *Handicapped person.* Section 104.3(j), which defines the class of persons protected under the regulation, has not been substantially changed. The definition of handicapped person in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to Section 504, as set forth in Section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93-516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment that substantially limits one or more major life activities. Paragraph (j)(2)(i) further defines physical or mental impairments. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any

such list. The term includes, however, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and, as discussed below, drug addiction and alcoholism.

It should be emphasized that a physical or mental impairment does not constitute a handicap for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities. Several comments observed the lack of any definition in the proposed regulation of the phrase “substantially limits.” The Department does not believe that a definition of this term is possible at this time.

A related issue raised by several comments is whether the definition of handicapped person is unreasonably broad. Comments suggested narrowing the definition in various ways. The most common recommendation was that only “traditional” handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps. The Department intends, however, to give particular attention in its enforcement of Section 504 to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The first of the three parts of the definition specifies that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered; nor are prison records, age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in Section 602 of the Education of the Handicapped Act, as amended. Paragraph (15) of Section 602 uses the term “specific learning disabilities” to describe such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Paragraph (j)(2)(i) has been shortened, but not substantively changed, by the deletion of clause (c),

which made explicit the inclusion of any condition which is mental or physical but whose precise nature is not at present known. Clauses (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits a major life activity. Under the definition of “record” in paragraph (j)(2)(iii), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition are protected from discrimination under Section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped.

4. Drug addicts and alcoholics. As was the case during the first comment period, the issue of whether to include drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The arguments presented on each side of the issue were similar during the two comment periods, as was the preference of commenters for exclusion of this group of persons. While some comments reflected misconceptions about the implications of including alcoholics and drug addicts within the scope of the regulation, the Secretary understands the concerns that underlie the comments on this question and recognizes that application of Section 504 to active alcoholics and drug addicts presents sensitive and difficult questions that must be taken into account in interpretation and enforcement.

The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. That opinion concludes that drug addiction and alcoholism are “physical or mental impairments” within the meaning of Section 7(6) of the Rehabilitation Act of 1973, as amended, and

that drug addicts and alcoholics are therefore handicapped for purposes of Section 504 if their impairment substantially limits one of their major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism in enacting Section 504, the committees that considered the Rehabilitation Act of 1973 were made aware of the Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act.

The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider—for all applicants including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work

place, provided that such rules are enforced against all employees.

With respect to other services, the implications of coverage of alcoholics and drug addicts are two-fold: first, no person may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause substantial interference with the operation of the program, the condition may be taken into consideration. Thus, a college may not exclude an addict or alcoholic as a student, on the basis of addiction or alcoholism, if the person can successfully participate in the education program and complies with the rules of the college and if his or her behavior does not impede the performance of other students.

Of great concern to many commenters was the question of what effect the inclusion of drug addicts and alcoholics, as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students. Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students.

5. *Qualified handicapped person.* Paragraph (k) of 104.3 defines the term “qualified handicapped person.” Throughout the regulation, this term is used instead of the statutory term “otherwise qualified handicapped person.” The Department believes that the omission of the word “otherwise” is necessary in order to comport with the intent of the statute because, read literally, “otherwise” qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be “otherwise qualified” for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms “qualified” and “otherwise qualified” are intended to be interchangeable.

Section 104.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term “essential functions” does not appear in the corresponding provision of the Department of Labor's Section 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is

useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of 104.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Section 104.3(k)(2) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of 104.6(a)(3), however, persons beyond the age limits prescribed in 104.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of Section 504.

Section 104.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which State law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act—generally, 3-18 as of September 1978, and 3-21 as of September 1980 are incorporated by reference in this paragraph.

Section 104.3(k)(3) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term technical standards refer to all nonacademic admissions

criteria that are essential to participation in the program in question.

6. *General prohibitions against discrimination.* Section 104.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1)(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

In this context, the term *equally effective*, defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. This standard parallels the one established under Title VI of the Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau v. Nichols*, 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase "in the most integrated setting appropriated to the person's needs" is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to 104.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in 104.38 and 104.47 in connection with physical education and athletics programs.

Section 104.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization

that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret 104.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of 104.23.

7. *Assurances of compliance.* Section 104.5(a) requires a recipient to submit to the Assistant Secretary an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating Title VI, Title IX, and Section 504 assurances. The Secretary is sympathetic to this request. While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. *Private rights of action.* Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under Section 504. To confer such a right is beyond the authority of the executive branch of Government. There is, however, case law holding that such a right exists. *Lloyd v. Regional Transportation Authority*, 548 F. 2d 1277 (7th Cir. 1977); see *Hairston v. Drosick*, Civil No. 75-0691 (S.D. W. Va., Jan. 14, 1976); *Gurmankin v. Castanzo*, 411 F. Supp. 982 (E.D. Pa. 1976); cf. *Lau v. Nichols*, supra.

9. *Remedial action.* Where there has been a finding of discrimination, 104.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against,

reinstatement of employees and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of Federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraph (a) (1), (2), and (3) have also been amended in response to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. *Voluntary action.* In 104.6(b), the term "voluntary action" has been substituted for the term "affirmative action" because the use of the latter term led to some confusion. We believe the term "voluntary action" more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes such the same purpose.

11. *Self-evaluation.* Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c)(ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-

evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. *Grievance procedure.* Section 104.7 requires recipients with fifteen or more employees to designate an individual responsibility for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from the Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of 104.8 could be coordinated with comparable action required by the Title IX regulation. The Department encourages such efforts.

13. *Notice.* Section 104.8 (formerly 84.9) sets forth requirements for dissemination of statements of nondiscrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under Section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under Section 504 and this regulation. In 104.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of Section 504, without dictating the

precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department.

Section 104.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under Section 504. The last sentence of 104.8(a) has been revised to list possible, rather than required, means of notification. Section 104.8(b) requires recipients to include a notification of their policy and nondiscrimination in recruitment and other general information materials.

In response to a number of comments, 104.8 has been revised to delete the requirements of publication in local newspapers, which has proven to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance. The separate form should, however, be included with each significant publication or form that is distributed.

Section 104 which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recruitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new 104.9 the Assistant Secretary may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. *Inconsistent State laws.* Section 104.10(a) states that compliance with the regulation is not excused by State or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession, does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind lawyers may find it more difficult to find jobs than do nonhandicapped lawyers.

SUBPART B—EMPLOYMENT PRACTICES

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulation implementing Title IX of the Education Amendments of 1972 (34 CFR, part 106) and the regulation of the Department of Labor under Section 503 of the Rehabilitation Act, which requires certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to Title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive Federal procurement contracts in excess of \$2,500 and are therefore also subject to Section 503.

15. *Discriminatory practices.* Section 104.11 sets forth general provisions with respect to discrimination in employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive Federal funds under Part B of the Education of the Handicapped Act, as amended (EHA). Section 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of Section 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting Section 606 Congress chose the words "positive steps" instead of "affirmative action" advisedly and did not intend Section 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under Sections 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of 104.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. *Reasonable accommodation.* The reasonable accommodation requirement of 104.12 generated a

substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirements of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Section 104.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Section 104.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed.

Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. The reasonable accommodation standard in 104.12 is similar to the obligation imposed upon Federal contractors in the regulation implementing Section 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two

regulations is not identical, the obligation that the two regulations impose is the same, and the Federal Government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the "business necessity" standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, colleges and universities. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to an understandable by recipients of ED funds.

17. *Tests and selection criteria.* Revised 104.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Secretary to be available. This paragraph is an application of the principle established under Title VII of the Civil Rights Act of 1964 in *Griggs v. Duke Power Company*, 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, 104.13(a) has been revised to place the burden on the Assistant Secretary, rather than the recipient, to identify alternate tests.

Section 104.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks,

except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. *Pre-employment inquiries.* Section 104.14, concerning pre-employment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on pre-employment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that pre-employment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might be required.

The Secretary has concluded that a general prohibition of pre-employment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

Section 104.14(b) allows pre-employment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under Section 503 of the Rehabilitation Act of 1973. In these instances, paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. *Specific acts of Discrimination.* Sections 104.15 (recruitment), 104.16 (compensation), 104.17

(job classification and structure) and 104.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of 104.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These deletions bring the regulation closer in form to the Department of Labor's Section 503 regulation.

A proposed section, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Section 104.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

SUBPART C—PROGRAM ACCESSIBILITY

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. *Existing facilities.* Section 104.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipient's program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under 104.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection

of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with 104.22, but would discriminate against qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost-efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate Section 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that provide health, welfare, or other social services may also comply with 104.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist might arrange to make home deliveries of drugs. Under revised 104.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a

significant alteration in existing facilities is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under Section 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to \$25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with 104.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure

that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but 104.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See 104.4(c)(2)(iv), prohibiting unnecessarily separate treatment; 104.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and new 104.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. *New construction.* Section 104.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Section 104.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words “if construction has commenced” will be considered to mean, “if groundbreaking has taken place.” Thus, a recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase “to the

maximum extent feasible” has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

Section 104.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to Section 502 as well as Section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

SUBPART D—PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term “adult education” refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, 104.32 and 104.33 apply only to public programs and 104.39 applies only to private programs; 104.35 and 104.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Lebanks v. Spears*, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Pub. L. 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that

educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student’s needs without additional cost to the student’s parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the “process” requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases, which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. *Location and notification.* Section 104.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by Section 504 and this regulation. This section has been shortened without substantive change.

23. *Free appropriate public education.* Under 104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient’s jurisdiction. The word “in” encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of

another person's or entity's failure to assume financial responsibility.

Section 104.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of 104.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new 104.33(b)(2) has been added, which allows this requirement to be met through the full implementation of an Individualized Education Program developed in accordance with the standards of the EHA.

Paragraph (c) of 104.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in 104.36.) Under this paragraph, a recipient's obligation extends beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those

medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but Section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to 104.33. Section 104.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of 104.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in Section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. *Educational setting.* Section 104.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under 104.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by 104.34.

Among the factors to be considered in placing a child is the need to place the child as close to

home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under 104.36 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant school and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under 104.34 and 104.36.

New paragraph (b) specified that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.

Section 104.34(c) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates Section 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being for handicapped persons.

25. *Evaluation and placement.* Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, 104.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures, delineated in 104.35 and 104.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Section 104.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. "Any action" includes denials of placement.

Paragraphs (b) and (c) of 104.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in "Issues in the Classification of Children," a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under Title VI and is more appropriately covered under that statute. Paragraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the Section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, 104.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing

the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under 104.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed Section 504 regulation, are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. *Nonacademic services.* Section 104.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of 104.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities.

Finally, the one-year transition period provided in a proposed section was deleted in response to the almost unanimous objection of commenters to that provision.

27. *Preschool and adult education.* Section 104.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to Section 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. *Private education.* Section 104.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they

operate special education programs; second, under 104.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of 104.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

COMPLIANCE STATEMENT

TITLE VI, CIVIL RIGHTS ACT OF 1964; THE MODIFIED COURT ORDER, CIVIL ACTION 5281, FEDERAL DISTRICT COURT, EASTERN DISTRICT OF TEXAS, TYLER DIVISION

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964 and with specific requirements of the Modified Court order, Civil Action No. 5281, Federal District Court, Eastern District of Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

- (1) acceptance policies on student transfers from other school districts;
- (2) operation of school bus routes or runs on a non-segregated basis;
- (3) nondiscrimination in extracurricular activities and the use of school facilities;
- (4) nondiscriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children;
- (5) enrollment and assignment of students without discrimination on the basis of race, color, or national origin;
- (6) nondiscriminatory practices relating to the use of a student's first language; and
- (7) evidence of published procedures for hearing complaints and grievances.

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act is found, the findings are reported to the Office for Civil Rights, U.S. Department of Education.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

TITLE VII, CIVIL RIGHTS ACT OF 1964; EXECUTIVE ORDERS 11246 AND 11375; TITLE IX, 1973 EDUCATION AMENDMENTS; REHABILITATION ACT OF 1973 AS AMENDED; 1974 AMENDMENTS TO THE WAGE-HOUR LAW EXPANDING THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AND VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1972 AS AMENDED IN 1974.

It is the policy of the Texas Education Agency to comply fully with the nondiscrimination provisions of all federal and state laws and regulations by assuring that no person shall be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action, or be denied any benefits or participation in any programs or activities, which it operates on the grounds of race, religion, color, national origin, sex, handicap, age, or veteran status (except where age, sex, or handicap constitute a bona fide occupational qualification necessary to proper and efficient administration). The Texas Education Agency makes positive efforts to employ and advance in employment all protected groups.