



Frequently Asked Questions

Regarding Services to Students with Disabilities

1. What DSPS services are colleges mandated to provide?

Disabled Student Programs and Services (DSPS) (Education Code, Section 84850 and Title 5, California Code of Regulations (5 CCR) Sections 56000-56076) were enacted in 1976 through the passage of Assembly Bill 77 (Lanterman), which funds support services and instructional programs for students with disabilities in the California Community Colleges. DSPS assists colleges to provide services and accommodations for students with disabilities to support their student success and to meet the requirements of federal and State non-discrimination laws, including Sections 504 and 508 of the federal Rehabilitation Act, the Americans with Disabilities Act (ADA), and State Government Code Sections 11135-11139.5.

Technically, operating DSPS is voluntary on the part of each college. Colleges are governed by the Title 5 regulations regarding DSPS only because they accept the DSPS funds allocated to them every year. A college could refuse the DSPS funds and not be subject to the requirements of Title 5 regarding DSPS. However, by refusing Title 5 funds, the college would not reduce or eliminate its obligations under state and federal law regarding the civil rights of people with disabilities and the need to provide services and accommodations to ensure that the college's programs and services are accessible to, and usable by, students with disabilities. In fact, DSPS assists greatly in providing the funding and the mechanism through which the college meets these federal and state requirements.

In many cases, it is very complicated to determine if a specific service is required by state and federal law since accommodations should be provided on an individualized basis, after engaging in an interactive process with the student with a disability. The critical requirement is that, as a result of the interactive process, disability related accommodations are provided to students **in order** to provide equal access to the educational process and to eliminate discrimination. As DSPS has evolved, some services and approaches have developed as efficient and successful strategies to meet the legal requirements for providing accommodations



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and services based on student need. So, while there may be no direct legal or regulatory requirement to provide a specific service, there may be an institutional standard and general programmatic expectation that has developed regarding such services. These services have grown out of a long-standing and substantial history of serving the diverse needs of students with disabilities attending California Community Colleges. Examples of such services are Learning Disability Assessment, Special Classes and High Tech Center services. None of these three services is specifically required by state or federal law or regulation to be provided by colleges to students with disabilities, but the contribution they make to meeting student needs and to ensuring accommodations are provided in an effective manner is the key reason colleges choose to provide them. They provide the means to the end. Obviously, the issue of what is “mandated” is complex and therefore must always be addressed on an individual basis, in consultation with your Administration, ADA Coordinator and if necessary district legal staff.

http://www.galvin-group.com/dspsresources/assets/CA_Title_5_regs.pdf

<http://resourcedirectory.galvin-group.com/DocUpload/REGULATIONS-2008.doc>

http://resourcedirectory.galvin-group.com/DocUpload/CA_Ed_Code_Sections.pdf

http://www.galvin-group.com/dspsresources/assets/Non_Discrimination_state_local.pdf

http://www.galvin-group.com/dspsresources/assets/508_law.pdf

<http://www.cccco.edu/ChancellorsOffice/Divisions/Legal/tabid/195/Default.aspx>



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- 2. Assuming a significant budget reduction in DSPS services; can we take into account considerations such as; where students are in the completion of their academic goals, number of units completed, or a history of dropping classing in developing a system whereby DSPS services would be prioritized based on these types of criteria?**

There are no models that we know of for serving one group of DSPS students enrolled in regular classes over another group. Colleges must provide appropriate services that follow the intent of the applicable state and federal non-discrimination laws, as well as, the Master Plan for Higher Education. The federal and state non-discrimination laws are designed to ensure that qualified students with disabilities are not denied an equal opportunity to participate in and benefit from an educational program. State Government Code sections 11135-11139.5 and the federal laws of Section 504 of the federal Rehabilitation Act and the Americans with Disabilities Act (ADA) all guarantee equal access to people with disabilities, and community colleges are subject to all of those laws. Therefore, the Community College District has the responsibility to provide appropriate academic accommodations, including auxiliary aids to all qualified students with disabilities enrolled in college classes and taking part in college activities. It should be noted that colleges can establish DSPS service policies that outline student rights and responsibilities, such as notification requirements that apply when a student will be absent from class and thus not need a specific service, such as an interpreter. However, such policies must be reasonable and fair, be applied to all students, and be provided in advance to DSPS students in an accessible format.



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- 3. The District has requested that we develop scenarios in the event of reduced funding. If the college initiates service elimination based upon the scenarios and we receive an OCR complaint based upon the reduced level of service(s), who would be held accountable should the college lose an OCR complaint?**

Your district is required to provide appropriate accommodations under the state and federal non-discrimination laws outlined in Question 2 as requested by an eligible student or member of the public, regardless of funding available through DSPTS to do so. If DSPTS funds are insufficient to pay for the accommodation, such as the request for sign language interpreters, or it is an accommodation which cannot be funded by DSPTS, the district will need to fund it from another source. If a non-discrimination complaint or lawsuit was filed by a student, the budget of the entire institution compared to the cost of the accommodation would be taken into account. Whether or not the college had planned and budgeted for such expenditure would be irrelevant because of the legal requirement to provide the necessary and appropriate disability related accommodation determined through the interactive process between the student and the college. Further, DSPTS may be providing services that are not required by state or federal non-discrimination laws, but are designed to meet the unique disability related educational needs of groups of students with disabilities. It is important to note that if the college chooses not to provide DSPTS services, such as special classes, which are not specifically required by state or federal law or regulation; it will continue to have the legal requirement to provide accommodations in general instructional settings, unless they pose a fundamental alteration to the curriculum. If a student with a disability filed a complaint with the U.S. Department of Education, Office for Civil Rights, which is the entity that oversees compliance with Section 504 and the ADA in higher education, OCR would review the complaint and determine if the service reduction or elimination violated one of these federal laws. If it was found to do so, the entire institution would be held in violation of the relevant law.



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<http://www.cccco.edu/ChancellorsOffice/Divisions/Legal/Discrimination/tabid/294/Default.aspx>

<http://resourcedirectory.galvin-group.com/Listing.aspx?ID=60>

http://www.galvin-group.com/dpsresources/assets/Legal_Advisory_04_04.pdf

4. Could test proctoring be limited in days and hours and can faculty or other departments be asked to provide the test accommodations? Can we restrict test accommodations to extended time only?

Working with your academic senate and administration, you may work out a reasonable agreement for the provision of test accommodations and test proctoring that takes into account the needs of the student, timeliness and the validity of the testing situation/proctoring. However, in our opinion, in order to meet the requirements for accommodations under state and federal laws, you may not restrict test taking accommodations to extended time only. The College must arrange appropriate test taking accommodations for the student based on the individual's disability related education limitation. The key consideration is that a test should measure a student's achievements and not the extent of the disability.

5. Can we limit interpreter services per each student to just cover lecture hours?

As previously stated, under Section 504 of the 1973 Rehabilitation Act, the ADA and California Government Code sections 11135 et. seq., a college is obligated to make disability related accommodations to assure access to the general college services and instructional process to students with a documented disability. A college is not required to provide interpreters for services of a personal nature, such as, if a group of students chose to go out to eat together after class. However, a college may be required, and may use DSPS funds to pay for interpreters in state supported activities that are directly related to the student's educational process. If



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interpreters are needed for other student activities that are part of the college, but not related to the educational process, the services must be provided and should be funded by the college or district using resources other than DSPS.

6. Where does tutoring fall in the spectrum of required accommodations?

As mentioned in previous questions, colleges must make accommodations to the disability related needs of students to ensure that services are accessible to and usable by them. Thus, students with disabilities must have access to the general college services and instructional process, including tutoring. Accordingly, if the college chooses to provide tutoring to the general student population it must make those services available to students with disabilities, and the college must provide appropriate and necessary accommodations during tutoring. Such accommodations could include the provision of individualized vs. group tutoring, if it was the only accommodation that would meet a student with a disability's functional limitation. If the college decides to provide DSPS-funded tutoring as an alternative, then that tutoring must be specialized in some way that addresses the DSPS student's disability-related educational/learning issues. An argument could be made that specialized tutoring provided through DSPS allows students with disabilities to more fully access and benefit from the general offerings and services of the college.

<http://www.ed.gov/about/offices/list/ocr/docs/auxaids.html>

7. Are colleges required to have a DSPS Counselor?

While the DSPS Coordinator is the only required position for a DSPS program, a college needs to have qualified staff to conduct work related to the provision of accommodations and services to qualified students with disabilities. These responsibilities include, but are not limited to:

- interviewing students with disabilities;
- reviewing disability documentation and determining disability related functional limitations in the educational setting;



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- working with the student to receive needed accommodations;
- coordinating and ensuring such accommodations are provided in a timely and effective manner;
- working with students with disabilities when they face various barriers to success or disability related issues related to college; and
- working with faculty and other college staff to answer their questions about accommodations and other issues related to students with disabilities, while staying within legal confidentiality requirements.

Given the complexity of these tasks, it is highly recommended that the person performing these functions have the appropriate background BOTH in counseling and in working with persons with disabilities. Should the college decide to hire a DSPS counselor to perform these functions, they may be paid from DSPS funds, if they meet the minimum qualifications required under Title 5 of the California Education Code, Section 53414.

http://www.galvin-group.com/dspsresources/assets/FAQ_Fulltime_Coord.pdf

8. Are colleges required to have a tram or other mobility service?

Under Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act, a college is obligated to make special accommodations to assure access to the general college services and instructional process to students with a documented disability. The college has responsibility to ensure equal access. Specialized transportation around the campus may be the best method of ensuring equal access on large campuses, or difficult terrain, where students may have difficulty accessing classes and services.

9. How do we cut notetaking costs?

Colleges are encouraged to be creative in providing effective notetaker services. This may include use of volunteer notetakers who are provided NCR paper to take



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notes. Some colleges provide small compensation such as gift cards to the bookstore or no cost, high value services, such as priority registration, to attract notetakers. If volunteers are used, colleges may need to set some criteria, such as prior completion of related classes with a minimum grade level, in an effort to maintain quality.

10. Are there minimum student/DSP&S staff ratios?

No, there are no minimum student/DSPS staff ratios.

11. Will DSPS, EOPS, and CalWORKs be granted “flexibility” and so be able to legally move funds between Program budgets and/or will there be categorical program block granting? Will there be any flexibility granted to DSPS programs from the required match dollars necessary to receive DHH augmentation funds?

At this time, there is no final decision related to categorical flexibility and DSPS funds. In addition, we know of no proposals to reduce or eliminate the required match for Deaf and Hard of Hearing funds.

12. Can a college petition the Chancellor's Office for a waiver to merge EOPS and DSPS into one program?

The EOPS process allows a college to submit a request to waive the regulatory requirement for a full-time EOPS Director. If a college submitted such a request and was granted approval by the Chancellor's Office, the college could establish one position that would be a *less than 100% EOPS Director / less than 100% DSPS Coordinator* position. Some colleges have already done so and it can be a feasible arrangement within the scope of EOPS and DSPS rules. Colleges must meet one of two possible criteria to receive an EOPS waiver: 1) They must have a full-time EOPS Coordinator assigned full-time to EOPS/CARE and who is responsible for managing the program in the absence of the EOPS Director or, 2) the EOPS program must have served less than 500 students in the most recent academic



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year for which the Chancellor's Office has received MIS data, and received less than \$500,000 in EOPS allocation the prior year. There is no legal requirement for a full-time DSPS Coordinator. However, the general idea of having a less than 100% DSPS Coordinator raises inherent operational concerns. Please refer to the attached document previously provided by the Chancellor's Office for more information on the issue of a full-time DSPS Coordinator.

The key considerations are: first, the DSPS Coordinator, regardless of whether it is a full-time position or less than full-time position, must meet the minimum qualifications as outlined in Title 5 CCR Section 56048. Second, that person must also be responsible for the day-to-day operation of DSPS, as further stated in Section 56048. Third, if they are serving jointly as the EOPS Director, as indicated in this hypothetical, their EOPS waiver documentation must be approved, current, and on file.

The EOPS waiver process is a mechanism that could potentially lead to the *merger* of these two required **positions** into one. However, we do not see this as an opportunity to *merge* the two **programs** into one. Regardless of how these key positions are established, all the requirements of a DSPS program are still in place in Title 5 and all the requirements of an EOPS program are in still in place in Title 5, if the college continues to accept funding for those two programs. The two programs may simply be overseen by one person serving as both DSPS Director and EOPS Director, using the EOPS waiver process and by complying with all other requirements of Title 5. Although this arrangement is feasible from a regulatory standpoint, there are many potential programmatic concerns.



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- 13. Can the college claim a fiscal emergency and use DSPS funds or DSPS personnel for general college operations? For example, can the college move an Alt. Media Specialist/High Tech Center Specialist to a general college computer lab?**

A College may not use Title 5 DSPS funds for any general college operations (Section 56064 & 56068).

A college may move DSPS personnel into other positions within the college. However, a college cannot use DSPS funds to cover that individual's salary and benefits, unless it is proportionate to the activities the individual undertakes to serve DSPS students with disabilities.

http://www.galvin-group.com/dspsresources/assets/ARTICLE4_Funding_Accountability.DOC

- 14. Given the changes due to budget shortfalls, is CCCCC continuing with Program Reviews & Site Visits?**

We assume Chancellor's Office program reviews and site visits will need to be suspended at least for 2009-10. We will consult with the CSSOs and program representatives when the budget situation is clearer.

- 15. Are there other resources available to fund Special Classes and their instructors, besides the funds generated from the weighted student count in the DSPS allocation? Is there any way they can be considered "reasonable accommodations"?**

Special classes are instructional activities offered consistent with the provisions of Section 56000 and designed to address the educational limitations of students with disabilities who are admitted to the institution pursuant to Educational Code Sections 76000 et seq. and who would be unable to substantially benefit from regular college classes even with appropriate support services or accommodations.



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Classes specially designed for disabled students may be sections of an existing course, taught in accordance with the Outline of Record for that course, but supplemented to define the specific conditions that pertain in that particular section in order to accommodate stated disabilities. Special classes may also refer, however, to distinct courses with their own Outlines of Record designed either to meet educational objectives unique to a population with specific disabilities or to supplement the standard objectives in an otherwise similar course, with objectives unique to that population. In either case, special classes-like all courses and sections of courses-must be primarily instructional in nature or must have objectives that fall within the instructional mission of the California Community Colleges. Such courses cannot be designed primarily to provide group activities or services, (e.g. physical activity, counseling, or assessment) but must provide systematic rather than incidental instruction in a body of content or skills whose mastery forms the basis of the student grade. Special classes offered for credit or noncredit shall meet the applicable requirement for degree credit, non-degree credit, or noncredit set forth in Sections 55002 and 55805.5 of this part. In addition, special classes shall:

- (a) Be designed to enable disabled students to compensate for educational limitations and/or acquire the skills necessary to complete their educational objectives.
- (b) Employ instructors who meet minimum qualifications set forth in Section 53414 of this division.
- (c) Utilize instructional methods or materials specifically designed to address the educational limitations of students with disabilities. Curriculum committees responsible for reviewing and/or recommending special class offerings shall have or obtain the expertise appropriate for determining whether the requirements of this section are satisfied.



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(d) Utilize student/instructor ratios determined to be appropriate by the district given the educational limitations of the students with disabilities enrolled in each class. Class size should not be so large as to impede measurable progress or to endanger the well-being and safety of students or staff.

Therefore, a case could be made to your administration that special classes provide an alternative to making accommodations to regular classes. In the case of open enrollment, without pre-requisites, any student could enroll in regular classes; therefore, a Special Class might be considered a reasonable accommodation.

Regarding funding, each student attending a special class is automatically counted as part of the Weighted Student Count (4 contacts) and each special class generates FTEs, a significant portion of which must be used to serve students with disabilities. Colleges may determine whether or not to provide special classes. Some colleges do not, as special classes are not college or DSPS requirements.

http://www.galvin-group.com/dspsresources/assets/Legal_Opinion_90_13.pdf

16. With revenue projections declining many colleges are attempting to define essential or core services that should be retained, can you address the value of retaining Learning Disability Specialists positions?

In addition to their role in assessing students' eligibility for services as a student with a learning disability in the CCC system, LD Specialists are responsible for review of assessment results from sources outside the CCC. They review and evaluate outside assessments in terms of whether that assessment information meets specified system criteria for the definition of LD and to advise how the outside assessments relate to the student's educational goals. With this information, they make recommendations for appropriate accommodations. An accurate and complete analysis of LD documentation is extremely important as students move through the higher education system. Students with documented learning disabilities make up the largest cohort of students with disabilities nationwide, as well as, the majority of students in DSPS programs and, therefore,



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generate a significant portion of the weighted student count. In addition, if Learning Disability Specialists are unavailable to perform testing to determine LD eligibility, only students who can afford to pay for outside LD testing would be able to receive disability related accommodations and services to support their student success. Based on the demographics of most California Community Colleges, these are not our typical students.

17. Do we have to provide alternate media to our students?

Community College Districts bear the ultimate responsibility under federal law for ensuring that they can respond to requests for materials in alternate media (e.g., ensuring an equal opportunity to participate in and benefit from an educational program and guarantee equal access to people with disabilities, as in State Government Code sections 11135-11139.5, and the federal laws of Section 504 of the federal Rehabilitation Act and the Americans with Disabilities Act (ADA). Providing materials in alternate media formats is a college-wide responsibility, because members of the public who have disabilities may need access to materials in your library or to college publications. Moreover, providing instructional materials in alternate media for students with disabilities in a timely and cost efficient manner is complex and demands the involvement and cooperation of all campus stakeholders.

18. Do we have to provide alternate media in the formats most desired by the student?

There are several considerations that must be taken into account in determination of appropriate alternate formats. The most significant of these considerations is the preference of the person/student making the request concerning the type of alternate format that will be most effective for their use. Section 35.160 of the regulations implementing Title II of the ADA specifically states: "When determining what type of auxiliary aid and service is necessary, a public entity shall give



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primary consideration to the requests of the individual with disabilities." (28 CFR § 35.160(b) (2).) Thus, whenever possible, information should be provided in the alternative format preferred by the person making the request (i.e., braille, audio tape, large print, electronic text). However, if it would be unduly difficult or expensive to provide the material in the requested medium by the time it is needed, the college may offer to provide it in another medium which would be equally effective given the needs of the person/student requesting the accommodation. To determine whether a proposed alternative format would be equally effective, the college should enter into an interactive process with the student with the disability.

<http://www.ed.gov/about/offices/list/ocr/docs/auxaids.html>

http://www.galvin-group.com/dspsresources/assets/Legal_Advisory_05_04.pdf

http://www.galvin-group.com/dspsresources/assets/Legal_Opinion_03_09.pdf

<http://www.galvin-group.com/dspsresources/assets/Final%20all%20inclusive%20distance%20ed%20guidelines%202008%208-14-08.doc>

http://www.galvin-group.com/dspsresources/assets/Alt_Media_Guidelines.pdf

http://www.htctu.fhda.edu/divisions/webaccess/508/Top_10_FAQs.htm

Other Resources

ADA/504 Compliance

<http://resourcedirectory.galvin-group.com/Listing.aspx?ID=134>

Chancellor's Office Resources

<http://resourcedirectory.galvin-group.com/Listing.aspx?ID=32>

Federal & State Laws Regulations & Guidelines

<http://resourcedirectory.galvin-group.com/Listing.aspx?ID=33>



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Rights and Responsibilities for inclusion of students with disabilities in postsecondary activities

<http://www.ed.gov/about/offices/list/ocr/publications.html#Section504>

<http://www.netac.rit.edu/publication/tipsheet/ADA.html>

http://www.washington.edu/doit/Faculty/Rights/Background/why_accommodate.html

<http://www.washington.edu/doit/Faculty/Rights/Faq/>

<http://www.washington.edu/doit/Faculty/Rights/Legal/>

http://www.galvin-group.com/dspsresources/assets/Legal_Advisory_2006-01.pdf

http://www.galvin-group.com/dspsresources/assets/ADA_504CoordinatorHandbook.pdf

Auxiliary Aids covered by the ADA and Section 504

<http://www.ed.gov/about/offices/list/ocr/docs/auxaids.html>

Academic Accommodations – Model Policy from Mira Costa that clearly defines the legal mandate to provide academic accommodations.

http://www.galvin-group.com/dspsresources/assets/_AcadAccomMira_Costa.pdf

http://www.galvin-group.com/dspsresources/assets/Legal_Opinion_92_19.pdf

http://www.galvin-group.com/dspsresources/assets/CO_Q_A_Tutoring.pdf

ADA Accessibility

<http://www.ada.gov/pcatoolkit/abouttoolkit.htm>

<http://www.ada.gov/pcatoolkit/chap1toolkit.htm>

<http://www.ada.gov/pcatoolkit/chap2toolkit.htm>

<http://www.ada.gov/pcatoolkit/noticetoolkit.htm>

<http://www.ada.gov/pcatoolkit/chap3toolkit.htm>