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AN EXAMINATION OF SECTION 504 IN PRACTICE: DARK DAYS FOR
STUDENT RIGHTS

by

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A Dissertation Submitted to the Faculty of
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ABSTRACT

AN EXAMINATION OF SECTION 504 IN PRACTICE: DARK DAYS FOR STUDENT RIGHTS

Ann S. Maydosz
Old Dominion University, 2009
Director: Dr. Stephen W. Tonelson

Section 504 of the Rehabilitation Act of 1973 is a broadly worded statement that addresses discrimination in schools and other settings. Enacted at about the same time as the Individuals with Disabilities Education Act (IDEA), Section 504 has been used sparingly in elementary and secondary schools. Section 504 presents an opportunity to redress educational inequities for struggling students because it can provide support for students with disabilities and impairments not covered by IDEA. However, due to vague wording, unclear case law, and limited training for school divisions and practitioners, schools are unsure how to implement and to comply with Section 504. These issues may have the effect of barring qualified students from coverage. The purpose of the present study was to ascertain the state of implementation and understanding of Section 504 in the Commonwealth of Virginia's elementary and secondary schools. Data were gathered from a survey administered to 323 Section 504 school administrators and 34 Section 504 division coordinators, due process hearing officers' decisions, Office for Civil Rights complaint resolution letters and federal judicial decisions. Analysis of these items indicated that while Virginia fared better in some areas than did other states, concern about the equity of educational opportunity for Virginia's students with impairments remains.

This dissertation is dedicated to my family, for the inspiration and prolonged support they have provided. To my dad, for his unabashed pride in all of his children and to my mom, whose belief in me endures beyond her ability to communicate it.

To my beautiful children Diane and Robin, whose presence in my life is a gift that I open every day and whose strength and accomplishments have inspired me from the very beginning. My children did not waver in their belief that their mom could be the kind of person who earned a doctoral degree at the age when others were retiring.

To Kim and Kim, who never let the acronym ABD creep into my consciousness.

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Doctoral students are often advised that they must love their dissertation topics in order to carry out the long process of writing a dissertation. I would like to propose that doctoral students must also love, or at least admire, their dissertation committees. The process of writing a dissertation requires not only academic oversight and correction, but also emotional support as the highs and lows of extended research may jeopardize the doctoral student's resolve. My committee provided this integral and embracing level of assistance to me.

Steve Tonelson, whose love for research is exceeded only by his strong concern that everyone around him is content and carefree.

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CHAPTER I

Introduction to the Problem

Section 504 of the Rehabilitation Act of 1973

No otherwise qualified individual with a disability in the United States...shall, solely by the reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (Section 504 of the Rehabilitation Act, 1973, § 794 (a)).

Introduction

There are two pieces of legislation that guide the education of elementary and secondary students with disabilities: Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA). These statutes and their associated regulations created the rights to equal access, free appropriate public education, education in the least restrictive environment, and procedural protections for students who historically had been excluded or underserved in public schools (US Commission on Civil Rights, 1997). Section 504 is a civil rights statute that prohibits discrimination in programs that receive federal funding and IDEA is a federal statute that specifies substantive and procedural rights for students with disabilities. States must demonstrate compliance with IDEA as a condition of receiving the federal funding associated with it. There is no funding attached to Section 504, but schools and programs that receive any federal financial assistance may have federal funding revoked if they fail to meet compliance guidelines (Mehfoud & Andriano, 2005; Seese, 2003).

As a civil rights statute meant to address discrimination against persons with disabilities, the broad goal of Section 504 is comparable access to education (Council of Administrators of Special Education [CASE], 2006). In this capacity, Section 504 protects students with disabilities, parents with disabilities, and school division personnel with disabilities. Section 504 provides for educational services, including extracurricular activities and nonacademic services, and comparable facilities in all programs and entities that accept federal funding assistance. Compliance with Section 504 is monitored and enforced by the Office for Civil Rights (OCR). The risk of losing federal funding and the comprehensive scope of an OCR complaint investigation heighten the importance of compliance for school divisions (Seese, 2003). Unfortunately, Section 504 is worded vaguely and lacks the specificity of IDEA in eligibility, evaluation, and service requirements (CASE, 2006). Heyward (1992) characterized it as “a maze of gray-area terms” (p. 4) that lacked objective standards even once the regulations had been published. As such, many school divisions remain unsure which students qualify and what a qualified student is entitled to under this potentially powerful statute (Holler & Zirkel, 2008; Madaus & Shaw, 2008; Seese, 2003).

Chapter Overview

Chapter I details the inception of Section 504 of the Rehabilitation Act of 1973 and the controversy surrounding the publication of the regulations, which comprise the background to the problem. The historical use of Section 504 is reviewed to add additional detail. The statement of the problem is presented through an examination of the guidelines and roles, training, litigation, research, and recent problems associated

with Section 504 implementation. The significance of the study, research questions, and a summary complete the information found in Chapter I.

Background to the Problem

Enactment of Section 504

Conceived before the Education for All Handicapped Children Act of 1975 (later IDEA), Section 504 grew out of a concern that public schools were not serving children classified as having mentally retardation, emotional disturbance, and physical disabilities. What would become Section 504 was originally written as a nondiscrimination provision that was to be included in the 1972 revision of the Civil Rights Act of 1964. This effort was unsuccessful and the provision was instead added to the Rehabilitation Act of 1973. The Rehabilitation Act of 1973 was intended to support improvements to adult education and training and rehabilitation programs for persons with disabilities (US Commission on Civil Rights, 1997). Despite the stated rationale that the addition of the section would enhance employment opportunities and societal acceptance for individuals with disabilities (US Commission on Civil Rights, 1997), some professionals found it puzzling that the civil rights-slanted content of Section 504 appeared in what was intended to be a bill to provide funding support to an existing statute (Johnson, 1988; National Council on Disability, 2003). Confusion ensued over the intent of the provision not only because the nondiscrimination premise of Section 504 lacked context within the Rehabilitation Act of 1973, but also because there was no clarifying language. It was unclear whether it was, in fact, a civil rights statute and if so, what protections were to be made available to individuals with disabilities and further, how schools and other programs were to comply (Richards, n.d.; Seese, 2003).

Publication of the Regulations

The confusion about Section 504 was not resolved with the publication of the regulations, which occurred four years after the enactment of the law under the pressure of a lawsuit and a vigorous campaign by disability rights advocates. The four year delay was attributed to “bureaucratic lethargy” (*Garrity v. Gallen*, 1981, p. 34), disagreement in Congress over the original intent of the law, political infighting and negligence on the part of the US Department of Health, Education, and Welfare (HEW) (Hulett, 2009; Yell, 2006).

The lawsuit, *Cherry v. Mathews* (1976), faulted HEW for failing to develop regulations and the court agreed, sardonically commenting that the regulations were not going to publish themselves. In 1977, disability rights advocates began a grass roots campaign to have the promulgated regulations issued without the “separate but equal” modifications that had been proposed. Advocates blocked HEW Secretary Joseph Califano’s driveway with their wheelchairs, held a candlelight vigil and occupied the San Francisco offices of the HEW for nearly a month (National Council on Disability, 2003; Yell, 2006). Ultimately, Califano signed the regulations without instituting any modifications (National Council on Disability, 2003). In keeping with the confusion that had characterized Section 504 thus far, the regulations were published by the HEW, and then authority was transferred to the Department of Justice, eventually to be given to the Department of Education’s Office for Civil Rights (OCR).

Historical Use of Section 504

Although the regulations for Section 504 of the Rehabilitation Act of 1973 (Appendix A) confirmed the civil rights nature of the statute and provided guidelines for preschools, elementary and secondary schools through a subpart dedicated to them, the regulations did little to resolve uncertainty regarding Section 504's practical application for students with disabilities. The four year delay in the publication of the regulations for Section 504 likely contributed to the confusion. The Individuals with Disabilities Education Act (IDEA) was signed into law in the same year that the Section 504 regulations were released and school divisions may have focused their efforts on compliance with IDEA, a more specific statute that carried direct federal funding for implementation and training (Heyward, 1992; Holler & Zirkel, 2008; Yell, 2006). According to Smith (2002), Section 504 then remained essentially overlooked in schools for many years.

When Section 504 was invoked in schools, it often was related to employment issues rather than students' educational rights (CASE, 2006). School administrators may have viewed the law as prohibition against discrimination in employment practices in schools (Seese, 2003). When student issues arose, schools likely attempted to interpret them through the employment regulations and litigations of the Rehabilitation Act of 1973. Other administrators assumed that Section 504 was enacted solely to allow physical access to buildings for students with disabilities, often accomplished by the construction of ramps and wider doorways (Kane, 2003).

In the early 1990s, however, events converged to create a resurgence of interest in Section 504. In that period, advocacy organizations and parents worked hard to secure access to education for students with acquired immune deficiency syndrome (AIDS) or

human immunodeficiency virus (HIV) (Katsiyannis & Conderman, 1994) and attention deficit hyperactivity disorder (ADHD), which were not specifically included in the IDEA list of disabilities (Brady, 2004; Seese, 2003). Parents began to demand educational accommodations for their children with disabilities under the free appropriate public education and least restrictive environment components of the section (CASE, 2006; Madaus & Shaw, 2008; Smith, 2002; Yell, 2006). At about that time, OCR underwent internal changes that shifted its enforcement focus from simply responding to complaints to creating training and outreach programs and attempting to provide interpretations of the law through publications and technical assistance (National Council on Disability, 2003). OCR's focus on reviving and enforcing Section 504 may have been meant to communicate the expectation that schools would use the law to ensure equal treatment and a free appropriate education for the broad group of struggling students that the law seemed to encompass (Blazer, 1999; Katsiyannis & Conderman, 1994; Yell, 2006).

Finally, the passage of the Americans with Disabilities Act of 1990 (ADA) may have prompted some individuals to reassess the potential afforded to students by Section 504 (Brady, 2004; Katsiyannis & Conderman, 1994). The ADA captured public interest with a renewed focus on ensuring better outcomes for adults with disabilities. Section 504 and the Title II of the ADA have important similarities. They share a legal relationship, use identical wording in terms of eligibility criteria, and have no federal funding attached, only sanctions for lack of compliance (Welner, 2006). While Title II of the ADA did not provide additional protections, it extended the scope of the Section 504 protections to the full range of state and local schools, programs and activities regardless of whether they received federal funding (OCR, 2005). Because of the similarities, ADA court decisions

•
have been used to guide Section 504 practice (CASE, 2006; Yell, 2006), despite the non-educational focus of many of the cases. As such, the publicity surrounding the enactment of the ADA may have served to reinforce, expand, and revive interest in Section 504.

Statement of the Problem

State departments of education and school divisions remain uncertain about how to comply with Section 504 (Brady, 2004; CASE, 2006; Heyward, 1992). The vague language of the original framers suits the civil rights intent of the passage but has contributed to confusion in practice that may result in under-use, overuse, or misapplication of the student rights that Section 504 can afford. Not surprisingly, Heyward (1992) termed Section 504 a “compliance nightmare” (p. 2). Administrators have reported that it is extremely complicated to distinguish students entitled to services under Section 504 from those who are not (Hess & Brigham, 2001). At the same time, across the nation, there are students with disabilities facing educational obstacles whose trajectories toward failure might be changed by the supports that Section 504 can provide.

Unclear Guidelines and Varied Roles

Heyward (1992) faulted OCR for unclear guidelines and poor dissemination of information. It was unclear who was qualified for coverage, what reasonable accommodations were, how investigations were carried out and what responsibilities were associated with Section 504 (Heyward, 1992). Other professionals laid the blame at the feet of the school divisions. For example, there is a great variety of building-level administrative positions that also include the duty of Section 504 coordinator, often depending on the size or wealth of the division (Scottie Alley, personal communication, June 3, 2008; Seese, 2003). Katsiyannis and Conderman (1994) suggested that the

implementation of the law would come closer to compliance if school administrators resolved the confusion surrounding building-level responsibility for 504 coordination. Notwithstanding, 14 years after Katsiyannis and Conderman's (1994) exposure of widely varying state compliance practices, Shaw and Madaus (2008) found school counselors, school psychologists, principals, and assistant/vice principals in charge of Section 504 implementation in their schools.

Additionally, the ultimate responsibility for compliance with Section 504 rests with general educators and administrators (CASE, 2006). However, because the implementation of this general education statute often involves the expertise of special educators (i.e., students with disabilities), special educators often participate in the process (CASE, 2006). Seese (2003) reported that special education directors often take over the compliance monitoring of Section 504 because, as one director commented, otherwise the students would end up in special education. The unclear and secondary delegation of Section 504 responsibility at the building level may contribute to its poor implementation (Katsyannis & Conderman, 1994).

Limited Training

Section 504 training is limited in many school divisions (Brady, 2004; Shaw & Madaus, 2008) and OCR lacks the funding to train school divisions (Sheralyn Goldbecker, personal communication, September 10, 2008). Using a stratified random sample, Madaus and Shaw (2008) surveyed 259 school professionals from six personnel roles: administrators, counselors, general education teachers, school psychologists, and special education teachers to ascertain their perceptions on compliance practices for Section 504. When asked to state when they had last received inservice training on

Section 504, 28% responded *never*; 16% responded that they'd received training in the *current year*; 21% reported receiving training *last year*; 29% had received training *two to five years ago*; and 7% had received training *more than five years ago*. Further, training may be directed to individuals who are not directly responsible for implementation. Seese (2003) surveyed 115 Connecticut special education directors about Section 504 compliance procedures and reported that 61.7% responded that yearly training was provided for the *special education* staff, while 48.7% noted that yearly training was provided to the *general education* staff.

Lack of Data and Defining Litigation

Problems with implementation have been further compounded by scant research on Section 504 and little guidance from litigation of Section 504 issues (Holler & Zirkel, 2008; Madaus & Shaw, 2008). Data on implementation would be immensely useful in ascertaining the prevalence and success of implementation. In 2002, the President's Commission on Excellence in Special Education soundly criticized OCR's failure to collect data and urged OCR to immediately begin collecting implementation and outcome data and set research priorities to improve services for students. Unfortunately, OCR has not made a comprehensive effort to collect statewide data on Section 504, or to provide summative information on complaints, complaint outcomes and compliance reviews (National Council on Disability, 2003). In turn, states may also choose not to collect data on Section 504 implementation.

In an attempt to ascertain the national percentage of Section 504-only students, Holler and Zirkel (2008) conducted a national survey using a random sample of public schools. Using the reported number of Section 504 students divided by aggregated

populations of the 594 responding schools, Holler and Zirkel reported that Section 504 students made up 1.2% of the sample's total students. These data place the prevalence of Section 504 students well below the reported percentage of 12.1% for students receiving services under IDEA. Unfortunately, lacking a comprehensive national sample, the actual percentage of 504 students still is unknown.

A strong base of litigation supports IDEA implementation and provides guidance for those seeking to challenge or expand the mandate it created. However, the boundaries and entitlements associated with Section 504 are considerably less clear, perhaps because of the overlapping statutory language and eligible population shared with IDEA.

Additionally, attempts to apply employment-related decisions and the language of the law related to employment has created a "murky" legal standard of deference (*Georgia State Conference of Branches of NAACP v. State of Georgia*, 1985)

Recent Problems: Claims of Misuse

Unclear responsibility, scant training, and a paucity of defining data and litigation are longstanding criticisms of Section 504. More recent problems have arisen in the claims of questionable identification of students for unwarranted 504 accommodations and services. In a national study of Section 504 students, Holler and Zirkel (2008) surmised that school personnel's various misunderstandings of the law had created a trend toward overidentification of students to allow coverage under Section 504. One Virginia teacher reported that in her division, students were considered eligible for Section 504 if they had failed the math or reading portion of a Standards of Learning test (Amy C., personal communication, September 16, 2008).

Some researchers have proposed that over/misidentification of students has occurred in response to possible federal sanctions leveled at schools found to be out of compliance (Holler & Zirkel, 2008; Seese, 2003). In order to provide services that would otherwise be unattainable or would come with the stigma of being in special education, schools also may be purposely misidentifying struggling students (Holler & Zirkel, 2008; Seese, 2003). Zirkel (2000) has also termed the creation of a 504 plan a “consolation prize” for parents hoping for IDEA eligibility (as cited in Holler & Zirkel, 2008, p. 31).

Another Section 504 issue concerns the misidentification of high school students expressly for accommodations on college entrance tests. Gross (2002) and Weiss (2000) detailed the manipulation of psychologists and school officials to gain accommodations like extra time on the Scholastic Aptitude Test (SAT) by high income families seeking higher scores for their children in an extremely competitive admissions market. Misappropriated accommodations also may be encouraged by school divisions. Schools may make the adequate yearly progress mandated by the No Child Left Behind Act more readily if they grant Section 504 eligibility and accommodations like readers, scribes, or alternate response methods to students whose scores tend to be low on statewide high stakes tests (Holler & Zirkel, 2008).

Significance of the Study

The phenomenon of school failure can be captured with any number of common metrics: dropout rates, unwarranted referrals to special education, school violence statistics, absenteeism rates, and poor academic performance as seen in grades and standardized test scores, to name a few. It is unknown how many of the students depicted in these statistics have impairments that might be ameliorated with the supports that

Section 504 can provide. Unfortunately, this vital information also remains unknown to the very entities responsible for identifying students and providing Section 504 coverage: division coordinators, school administrators and practitioners.

Section 504 can afford accommodations, special education, and related services to students who do not qualify for IDEA but are experiencing school problems. Section 504 does not require a specific disability categorization, only identification of an impairment that creates a substantial limitation on a major life activity like learning. As such, it may address the disproportional representation of minority students in special education by providing supports for minority students with impairments who are struggling and meet Section 504 eligibility criteria.

Section 504 has been available to American students for 36 years, yet no national data and scant state data on prevalence are available. Lack of data precludes implementation analyses, information for training, statistical forecasting, student profiling, measures of student outcomes, and planning for improvements in coverage. In fact, were Section 504 and the Rehabilitation Act to come under scrutiny for reauthorization today, as happened with the recent reauthorization of the Americans with Disabilities Act, the main body of performance data would be found in the attestations of students and parents who were denied services or given inadequate services under Section 504 by their school divisions.

The current literature slowly has begun to provide a profile, often state-by-state, of Section 504 implementation. This study added to the literature by contributing data for the Commonwealth of Virginia that may allow increased training and clarification by

state oversight bodies. In all, it can help to improve outcomes for Virginia students who may have been previously overlooked and underserved.

Research Questions

The research questions are designed to contribute additional data to the body of Section 504 research literature. Some questions extend previous lines of inquiry while others attempt to explore new themes or trends. The research questions are clustered around the problems discussed in the problem statement.

Research Question Cluster 1: Roles and Guidelines

Who is responsible for Section 504 implementation and oversight in Virginia schools and divisions and what other roles do these people fill? How well do Virginia Section 504 school administrators and Section 504 division coordinators understand Section 504?

Research Question Cluster 2: Training

What is the state of training in Virginia schools on the implementation of Section 504? To whom is training directed and how often is it provided? Do due process hearings and Office for Civil Rights complaints reflect inadequate training?

Research Question Cluster 3: Data

How many students in Virginia have 504 plans? What are the ethnicities and genders of Section 504 students in Virginia? What impairments and major life activities are served for Section 504 students in Virginia? What are typical accommodations?

Research Question Cluster 4: Recent Claims

In what grades do most 504 plans occur in Virginia? Is there disproportionality in the use of 504 plans in Virginia? In Virginia, do wealthier school divisions implement more 504 plans?

Research Question Cluster 5: Litigation

Does a review of Section 504 case law indicate conflicting decisions?

Chapter Summary

Chapter I provided information relevant to the problem addressed by this study: the possible impact of confusion over the implementation of Section 504 of the Rehabilitation Act of 1973. The inception, enactment, and historical use of the law provided context for the study of Section 504 while the problem statement captured some of the longstanding and recent difficulties faced in interpreting the law. The proposed study has significance in both the data that it will contribute and the potential impact on Section 504 implementation in Virginia.

CHAPTER II

Literature Review

Introduction

Section 504 is broadly worded and schools may underuse, overuse or misapply the coverage it affords. Holler and Zirkel (2008) have proposed that “loose use” of 504 plans and the pressure of sanctions and litigation have resulted in overidentification of students (p. 35) while other professionals characterized the law as ignored or interpreted so narrowly that not enough eligible students have been identified (Brady, 2004; Seese, 2003). The points of uncertainty in the law hold great importance as, in practice, Section 504 can provide for accommodations and specialized education for groups of students not covered by IDEA.

Chapter Overview

Chapter II will investigate the major points of confusion in the law: (a) understanding the differences between IDEA and Section 504; (b) who is qualified and eligible for Section 504 coverage; (c) what impairments are covered; (d) what the terms *substantially limits* and (e) *major life activity* mean; (f) which students should be referred; (g) what a 504 free appropriate public education means; (h) whether 504 students may receive special education; and (h) whether a student who is not eligible for IDEA is eligible for Section 504. Virginia’s Section 504 compliance will also be discussed. A summary of the literature review will be provided at the conclusion of the chapter.

*Understanding the Differences between Section 504 and the Individuals with Disabilities
Education Act (IDEA)*

In attempts to comply with Section 504, the first task state departments of education and school divisions face is discerning the legal differences between the IDEA and Section 504. Some schools may have approached the statutes as if they were at odds with each other, which may have prevented the development of compliance procedures (Heyward, 1992). Other schools erroneously assumed that compliance with the more stringent requirements of IDEA would bring them into automatic compliance with Section 504 (Katsiyannis & Conderman, 1994; Smith, 2002). What follows is an analysis of the salient differences between the two statutes. Additional information is available in Appendix B: IDEA, Section 504 and ADA Comparison.

While all students eligible under IDEA are also covered under Section 504 due to the broad scope of the eligibility statement, the reverse is not true (CASE, 2006). There are students eligible for Section 504 coverage who are explicitly or implicitly excluded from coverage under the IDEA. Once identified, these students are referred to as Section 504-only students, or simply, Section 504 students. IDEA requires specific disability identification for those who need special education and related services, while Section 504 does not require identification of a specific disability and covers those who may not need special education. For example, a student with juvenile arthritis may need a second set of texts at home or a student with a peanut allergy may need a peanut-free zone at school (CASE, 2006).

Regarding evaluation, IDEA has very specific requirements, while the Section 504 evaluation requirements are considerably less specific (CASE, 2006; Mehfoud &

Andriano, 2005). Educational services for an IDEA-eligible student must include special education, while Section 504 provides the accommodations and services necessary to prevent discrimination or lack of access to programs or curricula available to the average student (CASE, 2006).

Regarding parental notice, IDEA has specific procedural safeguards to protect students, parents, and schools. In contrast, Section 504 has a statement that parents must be provided with notice; but no statements regarding parental right to participate in decision or need for parental consent (Mehfoud & Andriano, 2005). Under Section 504 and IDEA, parents have due process hearing rights, but Section 504 complaints may be taken directly to the OCR (CASE, 2006). The procedural requirements under IDEA are precise. Section 504 has considerably fewer procedural requirements, specifically, the designation of a compliance officer, procedures for reporting grievances, the required posting of a notice of nondiscrimination, a “child find” requirement and the provision of a free appropriate public education for qualified students (CASE, 2006; Richards, n.d.).

Who is Qualified for Consideration under Section 504?

No otherwise qualified individual with a disability in the United States... shall, solely by the reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (Section 504 of the Rehabilitation Act, 1973, § 794 (a)).

Not surprisingly, the main text of Section 504 presented several immediate challenges to school divisions seeking compliance. Perhaps the least controversial of these was determining what *otherwise qualified* meant in school settings. Drawing on a

Supreme Court case, it was determined that despite the disability, the student must be otherwise qualified for the program (*Southeastern Community College v. Davis*, 1979). In other words, there is no obligation to waive program requirements for unqualified students (Mehfoud & Andriano, 2005; Osborne, 2002). As such, the student must be qualified to perform or be included in an activity before presence of a disability is addressed. For example, a student who can't dribble, pass or shoot is not eligible for play on a state competition level basketball team (Smith, 2002). In terms of educational programs, an otherwise qualified student is one who meets the age restrictions for students served by state and federal laws (Heyward, 1992; Madaus & Shaw, 2008).

A much more important uncertainty existed about the phrases *be excluded from the participation in, be denied the benefits of, or be subject to discrimination under*. Exclusion and discrimination might be fairly well recognized by school divisions, but to *be denied the benefits of* a program caused some to conclude that the law created more entitlement in terms of specialized education and services than a simple non-discrimination statute. Therefore, a lingering confusion on this point is whether Section 504 requires affirmative action by school division for qualified students. Despite the passages in the law describing a free appropriate public education, a "child find" requirement and non academic services for qualified students, Heyward (1992) asserted that Section 504 did not require affirmative action on the part of school divisions and recipients of federal funds, rather that they were prohibited from discrimination of students with disabilities. Heyward blamed the confusion around Section 504 and affirmative action on parents and advocacy groups attempting to exploit the intent of the law. Heyward's contention was borne out in *N.L. v. Knox County Schools* (2003), when

the court (citing *Smith v. Robinson*, 1984) stated that the law did not require affirmative efforts to conquer disabilities caused by handicapping conditions, but simply prevented discrimination on the basis of such handicaps.

However, as Kane (2003) indicated, Section 504 was intended to go far beyond its early reputation as a “ramp law,” instead providing for a free appropriate public education including educational programming and extracurricular and recreational activities (p.1). The description of free appropriate public education in the law would seem to confirm the entitlement to individualized education and services as necessary to allow the needs of eligible students to be met as adequately as those without disabilities (Section 504 of the Rehabilitation Act Regulations, 2000, § 104.33 (b)(i)).

Who is Eligible for Section 504?

Handicapped persons 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 (Section 504 of the Rehabilitation Act Regulations, 2000, § 104.3, (j)).

The three qualifying conditions above are the “prongs” of eligibility. A student who is found eligible by a school division 504 team under first prong (*has a physical or mental impairment*) is entitled to a free appropriate public education and therefore, a 504 plan (a written plan that specifies the students’ entitlements under Section 504) and all other protections under the law.

The Office for Civil Rights (OCR) has stated that prongs two and three do not trigger the free appropriate public education requirement because such students do not actually or currently have disabilities (Richards, n.d.; Yell, 2006). Students meeting prongs two and three (*has record of* and *is regarded as having such an impairment*) are, however, protected from discrimination in the school environment (CASE, 2006; Mehfoud & Andriano, 2005). For example, a student with bone cancer in remission who wants to try out for his school's football team is protected from discrimination under the second prong (*has a record of*). Similarly, a child whose family has a history of tuberculosis is protected from discriminatory practices like isolated seating in a classroom by the third prong (*is regarded as having such an impairment*) (Council of Educators for Students with Disabilities, n.d.). Yell (2006) reported that prongs two and three may create eligibility in employment cases, but do not invoke the free appropriate education requirement in elementary and secondary settings.

Unfortunately, prongs two and three have caused confusion in practice. Richards (n.d.) reported that an earlier edition of the Texas Education Agency guide on dyslexia mistakenly indicated that schools had a 504 duty to evaluate students with *a record of* and *regarded as having a disability*. Further, ineligibility under prongs two and three is a distinction that may have escaped some of the Section 504 guides written for parents and practitioners (see Brady, 2004 & National Resource Center on AD/HD, n.d.).

What Impairments Qualify for Section 504 Coverage?

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 (Section 504 of the Rehabilitation Act Regulations, 2000, 104.3, (j)(i)).

Generally, it is understood in practice that the preceding list of physical and mental impairments is not exhaustive (Council of Educators for Students with Disabilities, n.d.; Mehfoud & Andriano, 2005; Richards, n.d.). In fact, omission of a finite list of qualifying conditions was intentional on the part of the framers “because of the difficulty of ensuring the comprehensiveness of the list” (OCR FAQ, 2005, 2009, §12). However, the absence of a definitive list adds to uncertainty in applying the law in school settings. Madaus and Shaw (2008) surveyed 259 school professionals regarding Section 504 compliance procedures and found that 47% of the respondents indicated that Section 504 plans might be used to provide accommodations for students without disabilities (“e.g., slow processors, ESL students”) (p. 372).

The Office for Civil Rights (n.d.) clearly intended for practitioners to look beyond the regulations for “hidden disabilities,” however, and in a brochure for public circulation, urged school personnel to be alert for impairments that were not obvious to others. This clarification by OCR effectively added low vision, poor hearing, heart

disease, or chronic illnesses to the list. Further, OCR stated that students exhibiting behavior problems or poor academic performance also might have qualified, but hidden disabilities.

Over the years, parents and advocates have created entitlements for their specialty groups under Section 504 for additional disabilities that did not appear on the list. The use of Section 504 for eligible students with ADHD is well-established and now protected by the OCR (Huefner, 2006; Hulett, 2009; Katsiyannis & Conderman, 1994; Mehfoud & Andriano, 2005). In a national survey of schools concerning Section 504 students, Holler and Zirkel (2008) found that the most common reported disability served was ADHD (80%).

Student with food allergies, including peanut/tree nut allergies, have received Section 504 coverage recently. Students with asthma typically are provided access to monitoring devices, nebulizers, and inhalers under Section 504 (Education and Advocacy Solutions, n.d.). A qualified student with diabetes would be allowed monitoring of food consumption and blood sugar and a child with multiple chemical sensitivities was provided with monitoring by the school nurse and availability of oxygen (Hulett, 2009).

These medical issues seem relatively free of controversy, despite the reluctance of some schools to provide services (Brady, 2004; Seese, 2003). However, impairments that are less “medical” often pose more confusion. For example, despite the mention of behavior problems in OCR publications, schools remain unsure how to serve students with behavior problems under Section 504. Some practitioners may incorrectly believe that “behavior-only” students do not qualify if they do not also have cognitive problems (Richards, n.d.). Conderman and Katsiyannis (1995) provided examples of services and

accommodations that might be given to Section 504 students with behavior problems: (a) implementation of an individualized behavior management system using reinforcers and consequences; (b) provision of training and behavior management skills to teachers and parents; (c) teaching the student to follow the steps of a cognitive behavior modification process; and (d) providing individual or group counseling.

Dyslexia is specifically excluded from coverage under IDEA by some states (Brady, 2004). Considering the global impact of dyslexia on school performance, coverage under Section 504 would seem to fill a need for a great percentage of struggling students. Brady (2004) advised advocates that a large population of students with reading difficulties and dyslexia were likely eligible for special education and accommodations under Section 504. However, some school divisions view reading as a subset of the major life activity of learning and therefore not broad enough on its own to constitute the entire major life activity of learning. The Council of Administrators of Special Education (CASE) (2006) has advised that the entire major life activity of learning must be impacted. In other words, a student must exhibit poor performance across the entire spectrum of learning, which includes performance in all subjects (e.g., reading, math, language). In sum, confusion over impairments served may leave 504 eligibility teams in doubt when evaluating students with a range of presenting problems.

What Does “Substantially Limits” Mean?

Handicapped persons means any person who: has a physical or mental impairment which substantially limits one or more major life activities (Section 504 of the Rehabilitation Act Regulations, 2000, § 104.3, (j)).

The phrase *substantially limits* qualifies the impact of a student's impairment on his or her entitlement to Section 504 coverage. Professionals have proposed that the phrase provides the same type of eligibility guidance that *adversely impacts a student's educational performance* (Mehfoud & Andriano, 2005) or free *appropriate* public education (Hulett, 2009) provided in IDEA. In other words, the presence of an impairment, even when diagnosed by a doctor, is not enough to permit coverage. A substantial limitation also must exist (CASE, 2006; Yell, 2006). In a survey of 115 Connecticut special education directors, however, Seese (2003) found that 96.5% respondents indicated that medical documentation from a doctor was required for eligibility. Attorneys Mehfoud and Andriano (2006) advised that a medical diagnosis in itself did not dictate a 504 plan, but should alert the school that the student might be eligible. OCR has stated that a medical diagnosis alone does not create eligibility for a student (OCR FAQ, 2009).

The Office for Civil Rights addressed the clarity of the term *substantially limits* in the regulations by stating that a definition was "not possible at this time" (Section 504 of the Rehabilitation Act Regulations, 2000, Appendix A, Subpart A(3)). In 1994, however, OCR issued a response to requests for clarification on this point and others in the law. OCR again stated that such decisions were relegated to state and local authority (CASE, 2006; Richards, n.d.). For most practitioners, this leaves the highly subjective *substantially limits* determination without clear-cut guidance criteria (Brady, 2004). Madaus and Shaw (2008) found that only 61% of the 259 school personnel who responded to a survey regarding Section 504 compliance procedures indicated that there must be a significant impairment to a major life activity for Section 504 eligibility.

Comparative Frame of Reference

Under the constraints of compliance, other sources of guidance, like the Americans with Disabilities Act (ADA) arose and become integrated into Section 504 implementation (Clark, 2008; Richards, n.d.). The definition of impairment in the ADA states that an impairment must be substantial and somewhat unique when compared with the average person in the general population (CASE, 2006). This comparability standard provided a frame of reference that allowed schools to limit services to Section 504 eligible students. As in IDEA, school divisions were not obligated to provide services that would maximize a student's potential. Qualified students would be offered opportunities to achieve the same benefit accorded other students (Mehfoud & Andriano, 2005).

Therefore, when determining the impact of a student's impairment to ascertain whether a substantial limitation exists, the student's performance on affected activities is to be compared to an average student in the general population, not to the student himself (CASE, 2006; Clark, 2008; Heyward, 1992; Smith, 2002). Unfortunately, school divisions may be unaware of this standard. In a national survey of Section 504 prevalence and procedures, Holler and Zirkel (2008) found that only 6.7% of the 549 respondent principals selected the correct frame of reference to which a student seeking eligibility was to be compared.

Mitigating Measures

The claim of substantial limitation also was to be subjected to scrutiny of the use of mitigating measures. Mitigating measures are defined as devices or practices that a

person uses to “correct for or reduce the effects of that person’s mental or physical impairment” (OCR FAQ, 2005, ¶39). Examples include: medication, assistive devices, prostheses, and corrective lenses and, in one case, adjusting one’s study habits (CASE, 2006; OCR, 2005; Seese, 2003).

Consideration of mitigating measures for eligibility sprang from employment sector interpretations of the law, specifically the Supreme Court case *Sutton v. United Airlines* (1999). The Sutton case concerned “severely myopic” twin sisters who applied to US Airlines for employment as pilots and despite the fact that their corrected vision was average, were rejected because they did not have the uncorrected visual acuity required for pilots. They filed a discrimination suit under the ADA, but were found ineligible as disabled persons because when their impairment (myopia) was considered with the mitigating measure of glasses, it failed to provide a substantial impact on a major life activity. Therefore, although they were otherwise qualified to do the job, they could neither qualify for the job nor gain the protection of the law to pursue a claim against their potential employer. Zirkel (2007) commented that the Sutton case and others like it have narrowed the student coverage of Section 504 so that it seems to have little scope beyond what is already covered by IDEA.

Schools had been advised to consider whether the substantial limitation posed by the impairment had been mitigated to the extent that it was no longer substantially limiting (Clark, 2008), which, if so, erases disability status and the eligibility for services under Section 504. OCR (2005) directed, “A person who experiences no substantial limitation in any major life activity when using a mitigating measure does not meet the definition of a person with a disability and would not be entitled to FAPE under Section

504” (§39). However, the recent reauthorization of the Americans with Disabilities Act (2008) has now reversed the mitigating measures standard with the exception of eyeglasses and contact lenses (ADAAA, 2008).

Not all practitioners have been informed about the mitigating measures standard. Recent advocate and teacher guides on Section 504 omitted information and explanations of mitigating measures (see Brady, 2004; Smith, 2002). Holler and Zirkel (2008) found that slightly more than half (54.3%) of the 594 principals who responded to their national survey understood that mitigating measures have to be taken into account when determining eligibility for Section 504 at that time. Holler and Zirkel proposed that, while the impairment part of the eligibility criteria remains fairly accessible in case law, the courts have restricted Section 504 eligibility significantly by using comparative frame of reference and mitigating measures standards.

What are “Major Life Activities?”

Handicapped persons means any person who: has a physical or mental impairment which substantially limits one or more major life activities (Section 504 of the Rehabilitation Act Regulations, 2000, § 104.3, (j)).

The regulations for Section 504 did include a list of *major life activities*: walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. Through litigation, the courts also have added sitting and standing. Learning is the most frequently cited impairment in school settings. A student with asthma has an impairment that affects the major life activity of breathing and is often eligible for coverage under Section 504 as well (Richards, n.d.). However, school divisions have been advised by the Council of Administrators of Special Education

(CASE) (2006) that the major life activity *as a whole* must be substantially limited.

Under this global interpretation, the major life activity must be considered as a whole, not in part. For example, adequate scores in reading but poor scores in math do not indicate an impact on the whole life activity of learning (CASE, 2006; Holler & Zirkel, 2008).

The Office for Civil rights added *accessing learning* to the consideration of major life activities under which students could be found eligible. Citing the case of a child with severe asthma who needed an inhaler and other medication while in school, the OCR reported that some students did not have disabilities that directly affected their ability to learn, but rather impeded their access to learning (Richards, n.d.; Seese, 2003).

Practitioner guides may not include accessing learning among their examples of covered major life activities (see Brady, 2004; deBettencourt, 2002; Smith, 2002).

Practitioners also may be confused about whether a single major life activity is enough to find a student eligible. Huefner (2006) advised that when the only major life activity impacted is learning and the student did not require special education, establishing a substantial limitation would be difficult. Furthermore, respondents to a national survey (N= 549) on Section 504 students confused *major life activity* with *impairment* on the survey, reporting impairments (78.1%) rather than major life activities (Holler & Zirkel, 2008). Therefore, despite the fact that a list of *major life activities* was included in the regulations, misunderstandings still exist regarding the parameters of the list.

Who Should Be Referred?

In practice, the question of which students to refer is a less thorny issue to address than which students are eligible as ultimately, eligibility must be determined by a 504 evaluation team. However, comprehension of the law guides practitioners' understanding

of which struggling students to monitor. Additionally, failure to proactively evaluate students puts school divisions in danger of legal action and federal sanctions (Daughtery, 2001). The Council of Administrators of Special Education (CASE) (2006) advised that students should be referred when student's performance is substantially limited in one or more major life activities. Practitioners' guides have presented the following situations as considerations for referral: (a) serial suspensions; (b) consideration of retention in grade; (c) pattern of not benefiting from instruction is exhibited; (d) return to school after extended illness or injury (especially if student requests extra help); (e) return to school after release from treatment center or institution; (f) referral to IDEA, but no suspect disability; (g) ineligibility under IDEA after evaluation; (h) exhibits a chronic health condition; (i) danger of dropping out of school; (j) substance abuse (current drug use is generally excluded); (k) significant number of absences; and (l) parents notify school that child has particular physical or mental impairment (Brady, 2004; CASE, 2006; Council of Educators for Students with Disabilities, n.d.; Huefner, 2006; Mehfoud & Andriano, 2005; Zirkel, 2007). Critical examination of these referral recommendations lends credence to a broad interpretation of eligibility, rather than the limited one that seems to exist in practice.

What is Free Appropriate Public Education under Section 504?

Section 504 is administered under a comparative standard rather than the educational benefit standard dictated by IDEA. Despite the same terminology, this results in a different type of free appropriate public education (FAPE) for Section 504 students. IDEA provides special education and related services to allow an educational benefit whereas Section 504 provides special education and related services designed to meet

educational needs as adequately as the needs of persons without disabilities are met (Smith, 2002; Wright & Wright, 2007).

In attempting to define the boundaries of FAPE, controversy arose over whether Section 504 students are limited to the *reasonable accommodation* standard practiced in employment settings when invoking Section 504 protection. Section 504 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” (Section 504 of the Rehabilitation Act Regulations, 2000, § 104.3 (l)(1)). If the reasonable accommodation standard applies, then schools would be allowed to limit what was provided to the student under the claim that the requested accommodation “would impose an undue hardship on the operation of its program” (Section 504 of the Rehabilitation Act Regulations, 2000, § 104.12 (a)). Professionals have upheld the reasonable accommodation standard in practitioner literature (Heyward, 1992; LaMorte, 2008; Latham, Latham, & Mandalawitz, 2008; Yell, 2006).

But when Zirkel (1993) wrote to OCR for an interpretation of the reasonable accommodation standard as applied to students, he received the following response:

The key question in your letter is whether OCR reads into that Section 504 regulatory requirement for a free appropriate public education (FAPE) a "reasonable accommodation" standard, or other similar limitation. The clear and unequivocal answer to that is no... We conclude therefore that the regulation writers intended to create a different standard for elementary and secondary students than for employees or postsecondary/vocational students (OCR, 1993, ¶3, 6).

This leaves school divisions in the position of being unable to determine what the limits are to a free appropriate public education, if any.

Are Students Eligible for Special Education and Related Services under Section 504?

An enduring and simplistic way to distinguish Section 504 from IDEA has been to characterize Section 504 as providing only accommodations in the general education classroom while IDEA provided special education (Garda, 2005; Richards, n.d.). As stated previously, all students who receive services under IDEA also are covered under Section 504, due to the less defined eligibility criteria of Section 504. This means that there are students eligible under Section 504 who are receiving special education services (CASE, 2006). In practice, however, conflicting views on this topic can be found in textbooks, practitioner guides, and law reviews. Heufner (2006) stated, “The primary difference between IDEA students and 504-only students is that the former require special education and the latter require only general education and modifications...” (p. 69) while deBettencourt (2002) advised, “Contrary to popular belief, Section 504 is not limited to general education based services or modifications of general education programs” (p. 21).

Case law has not provided clarity on this point, instead relegating special education only to IDEA students. In *Lyons v. Smith* (1993), the decision of the Court was that “the only students likely to be entitled to special education under Section 504 are the same students also entitled to special education under the IDEA” (p. 7). Richards (n.d.) advised that providing special education services underwritten by IDEA to a Section 504 student may violate the funding restrictions of IDEA. School personnel who assume that identification under IDEA means special education classes while 504 services allow a

child to remain in a regular education setting often misadvise parents (Wright & Wright, 2007).

As Section 504 includes the “provision of regular or special education and related aids and services” (Section 504 of the Rehabilitation Act Regulations, 2000, § 104.33 (b)(1)), it seems that the intended plan for the eligible student could include regular education, special education, and/or related aids and services (CASE, 2006; Smith, 2002; Yell, 2006). However, often as is done with broad federal mandates, the final decision rests with state and local agencies. A clarifying document issued by OCR noted that special education was not defined in the regulations, nor by OCR, therefore the decision was to be made by the school division in accordance with state, local, and federal laws (CASE, 2006)

Is A Student Who Is Ineligible Under Individuals With Disabilities Education Act (IDEA) Eligible For Section 504?

The poorly defined boundaries between Section 504 and IDEA and muddy case law have led some professionals to advise that a student who does not meet IDEA eligibility criteria is unlikely to be eligible for Section 504 coverage (Holler & Zirkel, 2008; Mehfoud & Andriano, 2005; Richards, n.d.). In *N.L. v. Knox County Schools* (2003) the court stated, “finding that the similarity between the substantive and procedural frameworks of the IDEA and section 504 means that, if a disabled child is ineligible for placement under the IDEA, he is also ineligible under section 504 (p. 7)” and “the district court relied on its erroneous conclusion that IDEA and section 504 eligibility have significant differences “(p. 8). This view of identical eligibility and scope extends to services provided under the law as well. Some professionals have advised that

parents may not choose between Section 504 and IDEA if the student is eligible for both; a rejection of services under IDEA is tantamount to a rejection of services under Section 504 (Mehfoud & Andriano, 2005; Richards, n.d.).

While Section 504 eligibility is difficult to enforce in court, this view seems to contrast with the global nature and intent of Section 504 and the efforts given to its enactment (Blazer, 1999). Richards (n.d.) cited the decision in Anaheim (CA) Union High School District, in which the court plainly stated that a student could be considered disabled under Section 504 even though the student would not be eligible for services under IDEA. Many parents, advocates, and professionals feel that the law exists to serve and protect the rights of specific groups of students who would not be eligible under IDEA (Allen, 1991; Education and Advocacy Solutions, n.d.; Huefner, 2006; Richards, n.d.). Daughtery (2001) cautioned that schools should not limit evaluations to students who might be eligible only under IDEA at risk of a Section 504 violation. These conflicting advisements may have left school divisions unsure what purpose Section 504 serves and whether Section 504-only students exist.

Compliance with Section 504

When parents and advocates are dissatisfied with Section 504 eligibility or coverage, they may pursue mediation and/or due process hearings through their state departments of education or initiate complaints directly with OCR. Section 504 dispute resolution procedures allow direct access to the most powerful enforcement agency available (Education and Advocacy Solutions, n.d.; National Resource Center on AD/HD, n.d.). The ability to involve the federal oversight office for the law gives complainants a rare chance to circumvent state departments of education in attempting to

have disputes resolved. Most often, the Office for Civil Rights will investigate the complaint and, if warranted, issue a letter determining fault and advising a procedure to bring the division into compliance.

When an investigation is launched, it is far-reaching and may be condemnatory (Seese, 2003; Sneed, 2001). For example, Seese (2003) interviewed Connecticut special education directors to record their experiences with OCR investigations. The directors related an instance in which OCR arrived to investigate a complaint about gender equity in sports but also examined the angles of handicap ramps and the use of Braille signage in the school. Typically, investigations include student records reviews, building visits, and interviews with teachers over the course of several days (Seese, 2003; Sneed, 2001). Considering the potential revocation of federal funding, costly corrective actions, and the assignment of compensatory education, compliance with the law should be a priority for all states.

Virginia Compliance with Section 504

Section 504 requires that local education agencies (school divisions) must establish procedures to comply with the law but does not provide specific guidelines by which to operate (OCR FAQ, 2009). Therefore, the role of state educational agencies varies by state. Katsiyannis and Conderman (1994) conducted a national survey of state departments of education to determine the level of implementation of Section 504. They found that in the 21 years since the enactment of the law, fewer than half of the states had developed policies or guidelines. This lack of response was attributed to minimal involvement on the part of the state educational agencies (Katsiyannis & Conderman, 1994). Katsiyannis and Conderman called for leadership and an end to the reluctance to

develop policies, citing Virginia as an example of a state that provides only general guidelines. In fact, the Virginia Department of Education (VDOE) has “no monitoring, complaint resolution, or funding involvement” with Section 504 (Virginia Department of Health, 1999, p. 245).

Virginia school divisions are currently provided an *MOA On-site Civil Rights Review Checklist* by the VDOE to ascertain compliance with federal requirements from the Departments of Education and Justice, which includes Section 504. The checklist provides for notification, coordinator appointments, grievance procedures, accessibility and comparable facility guidelines, and a brief section on elementary and secondary 504 services (Commonwealth of Virginia, n.d.). The Virginia Department of Education (n.d.) also issues a *Policy: Guidelines for Section 504 programs for Students with Disabilities* that reminds readers that students may be eligible under Section 504 even if not eligible under IDEA and that such students are eligible for special education and related services. A checklist attached to this document provides for building team and notification procedures, staff awareness, and student file procedures. None of the areas of confusion described in this review are addressed in these guidance documents.

The Virginia School Health Guidelines (Virginia Department of Health, 1999) do not differentiate between the three prongs of eligibility for coverage in school settings, which could lead readers to infer that students with a record of or regarded as having a disability are entitled to a free appropriate public education. The Office for Civil Rights has attempted to clarify these misconceptions in its *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities* document: “unless a student actually has an impairment that substantially limits a major life activity, the mere fact that

a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE)" (OCR FAQ, 2009). The guidelines also state that students with temporary medical conditions due to illness or accident are covered by the law, despite an OCR statement that such decisions are to be made on a case-by-case basis and should involve substantial limitations.

In Virginia, special education cases of any type that reach the courts are rare. Hess & Brigham (2001) reported that the most common legal actions in Virginia were IDEA complaints and due process hearings. Between 1992 and 2000, 799 due process requests were filed with the VDOE (Hess & Brigham, 2001). From 2001 to 2008, there were 204 due process hearings for an annual average of 29. Of these, only one concerned a 504-only student (student not primarily served under IDEA). Most pertained to students making claims under both IDEA and Section 504. Invoking both laws frequently is done to gain a decision regarding coverage under either law.

In 2004, a 10th grader was found ineligible for coverage under IDEA and Section 504. Regarding the Section 504 claim, the hearing officer cited the "average person" frame of reference in her decision that the student was not substantially limited in his ability to learn. A difficulty in reading was noted, but using the student's grade point average and a Standard of Learning score, the hearing officer concluded that the student was able to learn as well as the average person (VDOE, July 12, 2004, HOD 04-114). Also, in 2004, a hearing officer found that a school division's refusal to reclassify a student into the Other Health Impairment category covered by IDEA and the division's eventual move to cease services was incorrect. In this case, the hearing officer relied

heavily on a doctor's diagnosis to confirm that the student did have a disability and was covered under Section 504 and IDEA (VDOE, July 26, 2004, HOD 04-096).

In 2005, a parent claimed that his child was discriminated against during the period that it took to resolve a claim of denial of free appropriate education under IDEA. While the claim of discrimination seemed to dovetail with a broad general understanding of Section 504, the claim for 504 coverage was rejected by the hearing officer due to the insufficiency of the parents' claim (VDOE, February 3, 2005, HOD 05-015).

The Office for Civil Rights recently issued a letter of resolution/closure to York County, Virginia, Public Schools regarding the division's refusal to provide services to a student with peanut/tree nut allergies. The Office for Civil Rights became involved in the case because the refusal resulted in the "extraordinary circumstance" that the student might suffer an anaphylactic reaction and die if exposed to peanuts/tree nuts. In a review of the division's decision to refuse services to the student, OCR found no evidence that contradicted the reports that the child had a life-threatening food allergy and expressed concerns that the school division's decision was not consistent with Section 504 regulations. As part of the closure of the complaint, the Office for Civil Rights reported that the division had signed a voluntary agreement to re-evaluate the student and further acceded to monitoring of the implementation of the agreement (OCR, January 8, 2007, Complaint No.:11-06-1147). This resolution essentially directed the school division to find the student eligible for Section 504 protections. In sum, based on this brief review, Virginia's understanding and level of compliance seems to parallel other states profiled in the literature.

Chapter Summary

Chapter II provided information on selected points of Section 504 implementation as they relate to practitioner understanding of the law. The intent of Section 504 has been in doubt since its enactment. It is evident that the language of the law has impeded its enforcement, even after regulations were promulgated (CASE, 2006; Heyward, 1991). To compound the problem, the OCR has not collected data nor made a widespread effort to clarify misunderstandings in the law (National Council on Disability, 2003; The President's Commission on Excellence in Special Education, 2002). Additionally, Section 504 litigation has not provided consistent guidance and may have limited the scope of the law to the point that it has no impact beyond the IDEA (Zirkel, 2007). Perhaps because of this, state departments of education may not have provided adequate training for their school divisions or resolved who is responsible for compliance (Brady, 2004; Shaw & Madaus, 2008). As such, the teams of practitioners and administrators entrusted with the identification and service of eligible students are at a great disadvantage. Given these issues with Section 504, it is possible that students who are entitled to protections and services under the law have not been accorded their civil rights.

CHAPTER III

Method

Introduction

The preceding chapters have established that confusion exists about the requirements and implementation of Section 504 of the Rehabilitation Act of 1973 in the nation's schools. Due to the confusion, students who might benefit from Section 504 services may not be identified and properly served. The purpose of this study was to ascertain the current state of Section 504 implementation in the Commonwealth of Virginia and to create a profile of the use and understanding of Section 504 in Virginia. To accomplish this purpose, Virginia's Section 504 division coordinators and school administrators were surveyed and archived data, due process hearing officers' decisions, Office for Civil Rights complaint resolution letters, and federal judicial decisions were reviewed. The research questions that guided this study were:

Research Question Cluster 1: Roles and Guidelines

Who is responsible for Section 504 implementation and oversight in Virginia schools and divisions and what other roles do these people fill? How well do Virginia Section 504 school administrators (SAs) and Section 504 division coordinators (DCs) understand Section 504?

Research Question Cluster 2: Training

What is the state of training in Virginia schools on the implementation of Section 504? To whom is training directed and how often is it provided? Do due process hearings and Office for Civil Rights complaints reflect inadequate training?

Research Question Cluster 3: Data

How many students in Virginia have 504 plans? What are the ethnicities and genders of Section 504 students in Virginia? What impairments and major life activities are served for Section 504 students in Virginia? What are typical accommodations?

Research Question Cluster 4: Recent Claims

In what grades do most 504 plans occur in Virginia? Is there disproportionality in the use of 504 plans in Virginia? In Virginia, do wealthier school divisions implement more 504 plans?

Research Question Cluster 5: Litigation

Does a review of Section 504 case law indicate conflicting decisions?

Chapter Overview

This chapter will describe the design, instruments, data collection, participants and the data analysis for this study. Study limitations also are discussed. Analyses of the survey response and nonresponse are included.

Design

The study was designed to gather descriptive quantitative data through direct survey of Section 504 division coordinators and school administrators. Survey data were augmented by archival data provided by the Virginia Department of Education. Quantitative data were analyzed using frequency analyses and exploration of correlations and other relationships between variables. Correlational studies do not provide cause-and-effect confirmations, but do add to the descriptive information about a phenomenon and may allow focused inquiry into related phenomenon (Leedy & Ormrod, 2005). Some qualitative and documentary data also were gathered and analyzed using a quasi

grounded theory approach (Patton, 2002). No sampling frame or strategy was used; the study included the entire population of Virginia Section 504 division coordinators (DCs) and principals, who were most likely to be the Section 504 school administrators (SAs).

Instruments

Two surveys were developed from a blueprint synthesized from the research (Appendixes C & D) (Madaus & Shaw, 2008; Holler, 2006; Holler & Zirkel, 2008; Seese, 2003). The surveys were divided into two parts: demographics and training. The demographic section requested data on students with 504 plans and individualized education plans (IEPs). The training section posed questions about training and procedural knowledge of Section 504. The division coordinator (DC) and school administrator (SA) surveys differed in demographic and training questions as the scope of responsibility and knowledge of the two participant groups differed. Division coordinator surveys had 28 items with response scales and two open-ended items. The SA surveys had 27 items with response scales and one open-ended item.

Participants were assured of the confidentiality of their answers and the voluntary nature of their participation. They were informed in the cover letter of a gift card incentive in appreciation for participating and informed that they would not be contacted again once they had responded. All participants were assigned unique, random research numbers that appeared on the surveys sent by mail and were entered by respondents upon accessing the Internet version of the survey. A database was created that contained the participants' numbers and facilitated the gathering of contact information and survey data. The database also allowed the researcher to withhold additional mailings from those who had already responded and create a pool of respondents for the lottery incentives.

Both the paper and the Internet versions of the surveys were created according to the guidelines for such instruments established by Dillman (2000). Design guidelines dictated the visual impact of the survey and the sequencing, wording, and presentation of the questions. The Internet version of the survey was delivered in Inquisite, a web-based survey program. The mail version consisted of a cover letter with an embedded research number and a corresponding numbered survey. Email contacts similarly were personalized using the mail merge function included in Microsoft Outlook. Respondents were offered a copy of the study's results upon request. The study was reviewed and approved by the college's Human Subjects Committee.

Instrument Development

To assess the validity of these instruments, the surveys were subjected to an expert review. A noted special education attorney, a school division attorney, and a representative of the Virginia Council of Administrators of Special Education (VCASE) were asked to critique the survey and provide an assessment of the survey's content validity (Appendix E). Additionally, the experts provided input on the appropriateness of the scope of the survey for each group of participants and the availability of requested data for each group. Once content validity had been established, the instruments were analyzed by a university researcher with over 10 years of social science research experience in the conduct of phone, web, and mail surveys. Based on the suggestions provided by the expert panel and the researcher, some items were reworded and clarified to increase response rate and yield analyzable data. Additional questions about training and written grievance and hearing procedures were added to develop the line of inquiry.

Data Collection

Survey

Section 504 division coordinators' (DCs) names, addresses, and emails were obtained from a request to the Virginia Department of Education (VDOE). In Virginia, Section 504 division coordinators often primarily serve as the division's special education directors. As noted in the literature review, the primary role of school Section 504 administrator (SA) may vary with the size of the school, but most often fall to the principal of the school. Therefore, letters and emails were sent to the principals of each Virginia school and included the request to redirect the survey to the Section 504 school administrator (SA) for the school if the principal did not fill that role. Principals' names were obtained through the VDOE's Educational Directory provided on its website. As the VDOE Educational directory does not provide principals' or schools' email addresses, these were obtained by searching each school's website or calling schools.

A panel of eight Virginia special education directors was consulted about the timing of the survey and the point in the school year which would most likely yield the highest response rates. The majority of those consulted favored a February/March timeframe as the least busy months for the participants, while others indicated that the summer months might afford a better response rate. To maximize response rate, the study began in February and ended in July.

Following the principles established by Dillman (2000) to reduce coverage, sampling, measurement, and nonresponse errors in survey research, there were multiple contacts using a mixed mode delivery. For the first phase of the study, each DC and principal (SA) was sent an email alerting him or her to the arrival of the study in paper

format in early February and offered a chance to immediately complete the survey on the Internet. Providing the option to complete the survey online allowed those respondents who wished to do so an immediate link to the survey. At mid-February, a cover letter, paper survey, and return envelope were mailed (Appendixes C & D). From the initial email and paper survey contacts, some DCs and SAs responded that they were unable to participate in the study without permission from their school divisions. The researcher then attempted to gain permission from school divisions over the remaining months of the study. Therefore, the second phase of the study focused on obtaining responses from those participants working in divisions that had granted permission. The DCs and SAs in those divisions granting permission each received another paper mailing and several emails requesting participation before the survey ended in July.

Additional Data

Dillman (2000) has noted that surveys that demand lesser amounts of the respondents' time are more likely to be returned. Holler and Zirkel (2008) stated that their respondents' inability to accurately identify their schools' demographic designators (e.g., urban, suburban, rural) posed a limitation in their study of Section 504 understanding. Therefore, to reduce the response burden of the surveys and increase accuracy of some items, additional data were obtained from a number of other sources. For research question cluster 3: *data* and cluster 4: *recent claims*, information on the number, gender, grade and ethnicity of students in the participating schools and divisions was obtained from *Student Membership by School* (VDOE, 2008). Per pupil expenditures were obtained from the *Superintendent's Annual Report for Virginia* (VDOE, 2008). For comparative purposes, per pupil expenditures (PPE) were categorized by the researcher

as high (\$10,611-\$20,320), middle (\$9637-\$10610) and low (\$8000-\$9636). The researcher created the high, middle, and low PPE ranges based on percentiles developed from a frequency analysis done in the Statistical Package for the Social Sciences (SPSS, Version 16.0). Free and reduced lunch statistics were taken from the *National School Lunch Program (NSLP) Free and Reduced Price Eligibility Report* (VDOE, 2008). The researcher also categorized free and reduced lunch eligibilities into high (66.66%-100%), middle (33.34%-66.65%) and low (0-33.33%) to enable comparisons. Information about students with disabilities served under IDEA came from the *Totals for Students with Disabilities* (VDOE, 2009). Demographic designators or locale descriptions also came from the Virginia Department of Education (2008). All of the previously mentioned documents were available on the VDOE website.

For research question cluster 2: *training*, due process reports were obtained on the VDOE website under the Due Process Hearing Officer Decisions. Data regarding OCR complaints in Virginia from 2005-2008 were obtained directly from the Office for Civil Rights under a Freedom of Information Act (U.S.C. 522, 1966) request. Office for Civil Rights officials provided resolution letters for complaints in which the complainant had invoked Section 504 coverage. For research question cluster 5: *litigation*, pertinent cases for the case law review were obtained via the Westlaw database using *Section 504, secondary and elementary education* as search parameters.

Participants

Each school division in Virginia has a designated Section 504 division coordinator and each Virginia school has a Section 504 school administrator. The Section 504 division coordinators' names were obtained by request from the Virginia Department

of Education (VDOE). Section 504 school administrators are not identified on the VDOE website but as every school has a person who fills this role, principals' names were obtained from the VDOE Education Directory (2008) to utilize as a contact for the school administrator. Therefore, principals acted as the initial contact in identifying the Section 504 school administrator. Using this methodology to define the population, this study initially targeted two groups of participants: Section 504 division coordinators (DCs) (N=140) and Section 504 school administrators (SAs) (N=2020). As the necessity to gain permission to conduct research within some school divisions became apparent, the DC population was narrowed from 140 to 58 and the SA population from 2020 to 577, reflecting the number of permitting divisions. At the end of the survey, with total analyzable responses from DCs at 34 and total analyzable responses from SAs at 323, response rates varied from 24.2% to 58.6% for DCs (Appendix F) and 15.99% to 55.9% for the SAs (Appendix F). The range of percentages reflects the population groups versus permitting groups.

Analysis of Survey Response

Several factors may have influenced the response rate of the survey. Kano, Franke, Afifi, and Bourques (2008) noted that nonresponse to surveys directed to schools is a frequent barrier to education research, citing Tomaskovic-Devery et al.'s (1994) contention that response to organizational surveys may be a function of the targeted respondent's authority, capacity or motive to respond. The multiplicity of roles assumed by principals and coordinators may have limited their capacity to respond. Simply put, every Section 504 school administrator was also a principal, assistant principal or

guidance counselor, among other roles. Many Section 504 division coordinators were also the divisions' special education directors among other duties.

The administrators' capacity to respond also may have been influenced by division requirements for advance approval of surveys by the division's central office. The approval process varied widely across the population, with verbal permission given over the phone to the researcher in some cases while other divisions required a review by a panel with full documentation of the researcher's and dissertation committee chair's authority.

Additionally, the timing of the request may have impacted the response rate. Utilizing the recommendations of the expert panel, the survey initially was launched a month before schools heightened their readiness to take the Virginia Standards of Learning exams (VSOLs). However, as the researcher reorganized and further phases of the survey were delayed to gain the official permission of the school divisions, respondents' attention may have been focused on the VSOLs. The problem caused by the diversion of the respondents' attention to the VSOLs may have been ameliorated by the continued circulation of the survey after the end of the VSOL testing period.

Additionally, the topic of the survey was the respondent's knowledge of and compliance with a federal mandate. Whether the mandate was poorly understood or perfectly understood, an investigation of the respondent's compliance may have evoked caution. The survey also asked for aggregate and individual student (albeit not identified by name) data that may have required requests of others (office personnel) or may have triggered privacy concerns.

Finally, although the division coordinator survey was directed to the person designated as the division's Section 504 Coordinator, the school administrator surveys were directed to the school principals, the group whom previous research has shown was most likely to assume the role of Section 504 school administrator. However, when the principal of the school was not the Section 504 school administrator, the principal then was asked to assume the responsibility of forwarding or conveying the survey to the person who held the role. This indirect method of locating and delivering the survey to the Section 504 school administrators may have had a negative effect on the response rate.

Notwithstanding the low (15.99%) response rate for SAs, it represented an adequate sample in terms of margin of sampling error (AAPOR, n.d.). Dillman (2000) and the American Association for Public Opinion Research (AAPOR) (n.d.) noted that a response of 323 from a population of 2020 would yield a representative sample with 95% confidence. This allows for a +/-5% margin of sampling error. Still, there is danger of non-response error, which was examined through the nonrespondent data analyses that follow.

As margin of sampling error is dependent on sample size rather than population size, the response of 34 DCs for a low rate of 24.2% is less favorable. Dillman (2000) and the AAPOR (n.d.) noted that a response of 103 from a population of 140 would have yielded a representative sample with 95% confidence. This would have allowed for a +/-5% sampling error. However, only 34 coordinators responded, which yielded a margin of sampling error of +/-14.6%. Nonrespondent analyses were conducted to examine non-response error.

Given the low response rates, the researcher compared the respondent groups of DCs and SAs to the population of Virginia school divisions and schools respectively, using ethnicity, per pupil expenditure, free and reduced lunch, and locale codes (see Tables 2 and 3). For DCs, the respondent sample is within +/- 5% of all Virginia school divisions in all areas with the following exceptions: the respondent sample has a greater representation of Black students (9.58% more than the population) and a greater representation (+10.65%) of middle range (33.34%-66.66%) free and reduced lunch eligible divisions. Conversely, the respondent sample is less representative (-11.9%) of low range (0-33.33%) free and reduced lunch eligible divisions. In terms of locale descriptions, the respondent sample provided by DCs has a smaller proportion (-7.79%) *rural, fringe* divisions represented than are evident in the total population of Virginia school divisions. However, cumulative percent differences for the DC respondent sample across all variables were at -.01% total.

Table 1

Comparison of Virginia School Divisions to Respondent Divisions

Variable	Virginia School Divisions	Respondent Divisions	Difference
School Divisions	132 ^a	34	
Students (full time) ^b	1,235,309	175,040	
Ethnicities ^b			
White	56.55%	White 55.07%	-1.48%
Black	25.68%	Black 35.26%	9.58%
Hispanic	8.96%	Hispanic 5.19%	-3.77%
Asian	5.60%	Asian 2.04%	-3.56%
Unspecified	2.80%	Unspecified 2.09%	-0.71%
American Indian	0.30%	American Indian 0.26%	-0.04%
Hawaiian	0.11%	Hawaiian 0.07%	-0.04%

Table 1 continued

Variable	Virginia School Divisions	Respondent Divisions	Difference
Per Pupil Expenditure ^c	High	High	-0.98%
	Middle	Middle	-0.98%
	Low	Low	1.96%
Free & Reduced Lunch ^d	High	High	1.25%
	Middle	Middle	10.65%
	Low	Low	-11.90%
Locale Description ^e	City, Large	City, Large	-0.75%
	City, Middle	City, Middle	0.62%
	City, Small	City, Small	-3.08%
	Rural, Distant	Rural, Distant	4.53%
	Rural, Fringe	Rural, Fringe	-7.79%
	Rural, Remote	Rural, Remote	0.48%
	Suburb Small	Suburb Small	2.19%
	Suburb, Large	Suburb, Large	0.48%
	Suburb, Midsize	Suburb, Midsize	-1.50%
	Town, Distant	Town, Distant	1.93%
	Town, Fringe	Town, Fringe	1.44%
	Town, Remote	Town, Remote	1.44%
			Sum of differences

Note. ^a VDOE Education Directory, 2008. ^b September 30, 2008 Student Membership by Division (Grade, Ethnicity, & Gender), VDOE, 2008. ^c Superintendent's Annual Report for Virginia; Sources of Financial Support for Expenditures, Total Expenditures for Operations 1 and Total Per Pupil Expenditures for Operations; Fiscal Year 2008, VDOE, 2008. ^d SY 2008-2009 National School Lunch Program (NSLP) Free and Reduced Price Eligibility Report; Virginia Department of Education, School Nutrition Programs (SNP), VDOE, 2008. ^e VDOE School Division Locale Descriptions, 2008.

The sample contributed by the SA respondents differs (+/-5%) from the population of Virginia schools in several ways. This sample over-represents White students at 8.41% greater than the population. There is also a greater representation (+6.22%) of middle range (33.34%-66.6%) free and reduced lunch eligible schools in the SA sample. The locale description *suburb, large* is over-represented in the sample by

13.49% greater than the population, while *rural, distant* schools are under-represented by -11.10%. However, when summed, percent differences for the SA respondent sample across all variables are at 0%.

Table 2

Comparison of Virginia Schools to Respondent Schools

Variable	Virginia Schools	Respondent Schools	Difference
Schools	2020 ^a	323	
Students (full time) ^b	1,235,309	189,351	
Ethnicities ^b	White 56.55%	White 64.96%	8.41%
	Black 25.68%	Black 21.31%	-4.37%
	Hispanic 8.96%	Hispanic 7.13%	-1.83%
	Asian 5.60%	Asian 4.38%	-1.22%
	Unspecified 2.80%	Unspecified 1.85%	-0.95%
	American Indian 0.30%	American Indian 0.28%	-0.02%
	Hawaiian 0.11%	Hawaiian 0.08%	-0.03%
School Level ^c	High 16.14%	High 17.03%	0.89%
	Middle 15.93%	Middle 17.65%	1.71%
	Combined 2.20%	Combined 1.86%	-0.35%
	Elementary 61.63%	Elementary 60.06%	-1.57%
	Alternative 4.10%	Alternative 3.41%	-0.69%
Per Pupil Expenditure ^d	14.20%	9.43%	-4.76%
	High 45.98%	High 52.20%	6.22%
	Middle 39.83%	Middle 38.36%	-1.46%
Free & Reduced Lunch ^c	High 14.20%	High 11.21%	-2.98%
	Middle 45.98%	Middle 51.09%	5.11%
	Low 39.83%	Low 37.69%	-2.13%
Locale Description ^e	City, Large 0.75%	City, Large 0.31%	-0.44%
	City, Middle 5.26%	City, Middle 8.36%	3.10%
	City, Small 6.02%	City, Small 4.33%	-1.69%
	Rural, Distant 27.82%	Rural, Distant 16.72%	-11.10%
	Rural, Fringe 19.55%	Rural, Fringe 24.46%	4.91%
	Rural, Remote 11.28%	Rural, Remote 7.12%	-4.16%

Table 2 continued

Variable	Virginia Schools	Respondent Schools	Difference		
	Suburb Small	0.75%	Suburb Small	0.62%	-0.13%
	Suburb, Large	11.28%	Suburb, Large	24.77%	13.49%
	Suburb, Midsize	1.50%	Suburb, Midsize	1.55%	0.05%
	Town, Distant	12.78%	Town, Distant	9.91%	-2.87%
	Town, Fringe	1.50%	Town, Fringe	1.86%	0.36%
	Town, Remote	1.50%	Town, Remote	0.00%	-1.50%
			Sum of differences		0.00%

Note. ^aVDOE Education Directory, 2008. ^bSeptember 30, 2008 Student Membership by School (Grade, Ethnicity, & Gender), 2008, VDOE, 2008. ^cSY 2008-2009 National School Lunch Program (NSLP) Free and Reduced Price Eligibility Report - School Level Data, VDOE, 2008. ^d Superintendent's Annual Report for Virginia; Sources of Financial Support for Expenditures, Total Expenditures for Operations 1 and Total Per Pupil Expenditures for Operations; Fiscal Year 2008 (division level data), VDOE, 2008. ^e VDOE School Division Locale Descriptions (division level data), 2008.

Analysis of Nonresponse

Nonresponse error is a threat to external validity (Kano, Franke, Afifi, & Bourques, 2008) and impacts the generalizability of the data gathered; therefore, an analysis of the nonresponders in this study was performed. Kano et al. illustrated the importance of determining the impact of nonresponse in survey research, especially as it relates to response rate, which typically is used to determine the efficacy and generalizability of the study. The threat of nonresponse lies in the extent of the nonresponse and the degree of randomness associated with the nonrespondents (Kano et al., 2008). As Kano et. al indicated, a low response rate from a representative population may be more useful than a higher response rate in a population that is skewed toward one variable or another. Therefore, in survey research with low response rates an investigation of the randomness of nonrespondents is warranted.

Kano et al. (2008) noted the use of univariate comparisons of respondents and nonrespondents; multivariate regression analyses to identify data weights; analyses of earlier and later waves of respondents and random follow-up interviews as common approaches to assessing nonresponse. Kano et al. suggested that researchers should use more than a single method of analyzing nonresponse. For this study, a comparison of respondent and non-respondent divisions and an analysis of early responding SAs and late responding SAs was performed.

Respondent v nonrespondent divisions. To determine whether there was a pattern among the nonresponding divisions in terms of locale codes, a Pearson's chi-square was performed on this nominal variable. In this case, a Pearson's chi-square test would determine a relationship between whether a division responded and the division's locale description (e.g., *rural, fringe*) by comparing frequency distributions. At a p-value = 0.718, it was determined that whether a division responded or not was not significantly associated with the division's locale code. The means of the remaining ratio variables: ethnicity, number of full time students, students with IEPs, free and reduced lunch, and per pupil expenditures were compared using an independent two sample t-test. The results are in Table 3.

Table 3

Comparison of the Characteristics of Responding and Nonresponding Divisions

Division Characteristics	Responding Divisions (N = 34)	Nonresponding Divisions (N = 98)	<i>t</i>	<i>p</i>
	M (SD)	M (SD)		
Unspecified	109.88 (379.18)	314.80 (1227.20)	-0.956	0.341
American Indian	15.35 (23.39)	32.95 (64.74)	-2.294	0.023*
Asian	105.38 (210.21)	669.08 (3305.02)	-0.991	0.323
Black	1817.76 (4431.90)	2606.54 (4809.25)	-0.84	0.402

Table 3 continued

Division Characteristics	Responding Divisions (N = 34)	Nonresponding Divisions (N = 98)	<i>t</i>	<i>p</i>
	M (SD)	M (SD)		
Hispanic	267.09 (512.51)	1036.58 (3641.01)	-2.033	0.045*
White	2870.76 (2525.98)	6132.48 (10616.16)	-2.82	0.006*
Hawaiian	3.47 (10.37)	12.26 (63.25)	-0.804	0.423
Total full time students	5189.71 (6879.52)	10804.68 (21528.94)	-2.269	0.025*
Students with IEPs	680.71 (943.39)	1467.22 (2939.62)	-2.326	0.022*
Free and Reduced Lunch (%)	43.46 (14.95)	41.92 (16.52)	0.481	0.631
PPE (\$)	10591.97 (1882.74)	10631.52 (2032.86)	-0.1	0.921
	%	%	χ^2	<i>p</i>
Locale Description				
City, Large	0	1	7.95	0.718
City, Middle	5.9	5.1		
City, Small	2.9	7.1		
Rural, Distant	32.4	26.5		
Rural, Fringe	11.8	22.4		
Rural, Remote	11.8	11.2		
Suburb, Large	11.8	11.2		
Suburb, Midsize	0	2		
Suburb, Small	2.9	0		
Town, Distant	14.7	11.2		
Town, Fringe	2.9	1		
Town, Remote	2.9	1		

Note. *Significant at $p < .05$ level. M = mean; SD = standard deviation; t = measure of association derived from using independent two sample t test; χ^2 = measure of association derived from Pearson's chi-square test, p = level of statistical significance.

The nonresponding divisions were significantly different than the responding divisions in terms of the average percentage of American Indian, Hispanic, and White

students. There were also significant differences in the average percentage of total students and students with IEPs. Despite the finding that locale descriptions were not significantly associated with whether a division responded, these differences in division variables raise some questions about the randomness of the nonresponse in this study and the generalizability of the results.

An analysis of early and late responding school administrators does strengthen the representativeness of the group of responding school administrators. Kano et. al (2008) asserted that a comparison of early respondents and late respondents could assist in the evaluation of nonresponse bias. The late responders are more similar to the nonrespondents in the sense that securing their responses took more effort from the researcher than was required for the early respondents. Late respondents were compared to the early respondents using the same analyses as were used for the responding and nonresponding divisions. To evaluate the difference between the groups in terms of locale descriptions, a Pearson's chi-square test was performed with the result that whether a school administrator responded early or late was not significantly associated with the school's locale description (e.g., rural, distant) at a p value of 0.486. Independent sample t-tests were used to compare the remaining characteristics. The results appear in Table 4.

Table 4

*Comparison of the Characteristics of Early Responding and Late Responding School**Administrators*

School Characteristics	Early Responding SAs (N = 186) M (SD)	Late responding SAs (N = 137) M (SD)	<i>t</i>	<i>p</i>
Unspecified	10.88 (18.45)	11.77 (18.72)	-0.415	0.697
American Indian	1.58 (2.24)	1.92 (2.86)	-1.181	0.238
Asian	26.87 (56.74)	26.21 (68.24)	0.093	0.926
Black	130.60 (181.15)	127.67 (140.41)	0.155	0.877
Hispanic	48.26 (89.15)	36.41 (69.04)	1.273	0.204
White	391.37 (285.65)	398.18 (322.49)	-0.197	0.844
Hawaiian	0.43 (1.81)	0.49 (1.36)	-0.315	0.753
Total full time students	610.44 (427.56)	602.65 (439.58)	0.157	0.875
Students with IEPs	72.38 (59.15)	244.13 (1433.67)	-1.37	0.173
Free and Reduced Lunch (%)	39.48 (20.08)	39.40 (20.75)	0.033	0.974
PPE (\$)	10487.77 (2057.38)	10521.25 (1679.22)	-0.156	0.876
	%	%	χ^2	<i>p</i>
Locale Description				
City, Large	0.5	0	9.492	0.486
City, Middle	7.5	9.5		
City, Small	4.8	3.6		
Rural, Distant	16.7	16.8		
Rural, Fringe	23.1	26.3		
Rural, Remote	8.1	5.8		
Suburb, Large	26.9	21.9		
Suburb, Midsize	2.2	0.7		
Suburb, Small	0.5	0.7		
Town, Distant	7	13.9		

Table 4 continued

	%	%	χ^2	<i>p</i>
Town, Fringe	2.7	0.7		
Town, Remote	0	0		

Note. M = mean; SD = standard deviation; *t* = measure of association derived from using independent two sample *t* test; χ^2 = measure of association derived from Pearson's chi-square test, *p* = level of statistical significance.

The analysis of early responding and late responding school administrators revealed no significant differences for any of the variables used. Using the late responders as proxies for nonrespondents, this would suggest that the degree of nonresponse from school administrators was random, which increased the generalizability of the results of this study.

Data Analysis

All survey data were entered into a Microsoft Excel spreadsheet, whether by hand for the paper surveys or by download from Inquisite. Data from archival sources were added to the spreadsheets. All quantitative data was analyzed using Excel and/or the Statistical Package for the Social Sciences (SPSS, Version 16.0). All open-ended responses, complaint letters, and legal decisions were analyzed using a quasi grounded theory approach. Specifically, the researcher (a) conducted a content analysis of the data, (b) determined relevance to research questions; (c) formed categories by identifying recurrent themes; and (d) reread the data, sorting it into categories similar to an approach

described by Patton (2002). The research questions will be answered using the data and data analyses in Table 5.

Table 5

Blueprint for Research Questions and Data Analyses

Research Question Clusters	Research Questions	Data Analyses	
<i>Research Question Cluster 1: Roles and Guidelines</i>	Who is responsible for Section 504 implementation and oversight in Virginia schools and divisions and what other roles do these people fill?	Frequency analysis of roles other than Section 504 School Administrator for school level Frequency analysis of roles other than Section 504 Division Coordinator	
	How well do Virginia Section 504 school administrators and Section 504 division coordinators understand 504?	Frequency analysis of school administrators and division coordinators' responses to procedural knowledge questions Frequency analysis of additional procedural knowledge question responses for school administrators Frequency analysis of additional procedural knowledge question responses for division coordinators Categorization and frequency analysis of school administrators and division coordinators' responses to 504 v. IDEA open ended item	
	<i>Research Question Cluster 2: Training</i>	What is the state of training in Virginia schools on the implementation of Section 504? To whom is training directed and how often is it provided?	Frequency analysis of school administrators and division coordinators' report of Section 504 training Frequency analysis of division coordinators' responses to additional questions regarding Section 504 training Frequency analysis of division coordinators' inquiries regarding Section 504
		Do due process hearings and OCR complaints reflect misunderstanding?	

Review of Virginia Due Process Hearing Officers'
Decisions for 2005-2008

Table 5 continued

Research Question Clusters	Research Questions	Data Analyses
		Division coordinators' report of Office for Civil Rights complaints
		Review of Office for Civil Rights Complaint Resolution Letters for Virginia 2005-2008
<i>Research Question Cluster 3: Data</i>	How many students in Virginia have 504 plans?	Frequency analysis of Section 504 data reported by school administrators and division coordinators
	What are their genders, ethnicities, impairments and major life activities impacted by their impairments?	Report of other impairments listed by school administrators and division coordinators
		Report of other major life activities listed by school administrators and divisions coordinators
	What accommodations are typically given to students on 504 plans?	Frequency analysis of school administrators and division coordinators responses to accommodations questions
		Report of accommodations listed under other by school administrators
<i>Research Question Cluster 4: Recent Claims</i>	In what grades do most 504 plans occur in Virginia?	Grades distribution analysis for school administrators and division coordinators
	Is there disproportionality in the prevalence of 504 plans in Virginia?	Analysis of rate ratio at school and division levels
	Do wealthier school divisions implement more 504 plans?	Correlation analysis of per pupil expenditure with 504 prevalence at school and division level

Correlation analysis of free and reduced lunch eligibility
with 504 prevalence at school and division level

Table 5 continued

Research Question Clusters	Research Questions	Data Analyses
<i>Research Question Cluster 5: Litigation</i>	Does a review of Section 504 case law indicate conflicting decisions?	Review of Section 504 case law under search parameter delimiters

Limitations

Nonresponse error and overlap in populations present threats to the external validity of this study. An analysis of nonresponse error revealed significant differences on five demographic variables in the responding and nonresponding school divisions. While these differences might have been caused by clustered populations or outliers in responding and nonresponding divisions, the analysis suggests that the population of responding division coordinators may not be as representative as the population of responding school administrators. The early and late responding school administrators had no significant differences in any of the studied variables and therefore may be a more representative population.

Regarding overlapping populations, the fact that all school administrators and all division coordinators were invited to participate in the study resulted in overlap in respondent populations and some of the same data may have been reported from different groups. For example, 76 of the schools in the school administrator sample had a division coordinator reporting division level data that would have included the school administrators' data. This is an important note for all reports of prevalence data.

Generalizability to other states may also be limited due to the focus of the sample on Virginia schools. Additional limitations to this methodology include the element of self-reported data as collected by the survey. Finally, and despite expert review of the instrument, the use of an original survey poses limitations in terms of reliability and validity.

Chapter Summary

This chapter summarized the method employed in the study, including the design, instrument, sample, and data collection and analysis. Analyses of the survey response rate and nonresponse rate were presented. Limitations of the method were discussed.

CHAPTER IV

Results

Introduction

The purpose of the present study was to ascertain the state of Section 504 implementation in the Commonwealth of Virginia and to create a profile of the use and understanding of Section 504 in Virginia. Research questions were drawn from recent studies regarding Section 504 and focused on the issues of (a) unclear guidance and varied administrator roles; (b) limited training; (c) lack of data on prevalence of 504 plans; (d) misuse of 504 plans; and (e) lack of defining litigation.

Chapter Overview

This chapter will present the data findings and analyses as they relate to the research questions. Data were gathered from Section 504 division coordinators (DCs), Section 504 school administrators (SAs), archival data sources, due process hearing officers' decisions, Office for Civil Rights resolution letters and a review of case law on Section 504 and analyzed via frequency distributions, rate ratio computations, correlational analyses, and quasi grounded theory methodology.

Analysis of the Data

Research Question Cluster 1: Roles and Guidelines

Research question cluster 1 investigated the primary and additional roles of the persons responsible for Section 504 implementation and oversight in Virginia schools (SAs) and divisions (DCs) and the understanding of SAs and DCs of procedural aspects of Section 504.

Primary and additional roles of Section 504 school administrators and Section 504 division coordinators. This information was generated through the survey of the SAs and DCs. Section 504 school administrators were asked their primary roles in addition to Section 504 administrator and were provided a response scale with the option of indicating another role under *other*. Frequency distributions appear in Table 6.

Table 6

Section 504 School Administrators' Primary Roles

Role	n	%
Principal	162	53.64%
Assistant principal	55	18.21%
Guidance counselor	48	15.89%
Special education teacher	8	2.65%
Other: Special Education Coordinator/Team Leader/Chair	6	1.99%
General education teacher	5	1.66%
Other: Assessment/Compliance Coordinator	3	0.99%
Other: Head/Senior Teacher	3	0.99%
Other: Administration Assistant	2	0.66%
Other: Director of Student Services	2	0.66%
Other: Reading specialist	2	0.66%
Other: Speech Therapist/Pathologist	2	0.66%
Other: Director of Counseling	1	0.33%
Other: Resource Teacher	1	0.33%
Other: School Psychologist	1	0.33%
Other: unstated	1	0.33%

Note. N = 302

Table 6 showed that the majority (87.7%) of respondents were also principals, assistant principals, or guidance counselors at their schools. Fourteen respondents (4%)

held roles related to special education (e.g., special education teacher or special education coordinator).

Section 504 division coordinators were asked what other roles they filled and could indicate as many additional roles as applied via fill-in-the blank entry. Where not otherwise indicated, it was assumed that the respondent had a coordinator role and therefore the word “coordinator” was supplied.

Table 7

Section 504 Division Coordinators' Additional Roles

Role	n
Director of Special Education	24
Director of Gifted Education	4
Federal Programs Coordinator/Director	4
Homeless Liaison	3
Testing Director	3
Assistant Director of Special Education	2
Guidance counselor	2
504/RTI Coordinator	1
Assistant Superintendent	1
Assistant to the Executive Directors of Elementary, Middle and High School	1
Autism Awareness Team member	1
Child Study	1
Coordinator for Board Discipline Matters	1
CPMT [sic] rep/chair	1
Director of Instruction	1
Division Representative for FAPT [sic]	1
Effective Schoolwide Discipline Coordinator	1
English as a Second Language Coordinator	1
Homebound coordinator	1
ICT [sic] team member	1
IEP coordinator	1
Individual/small group coordinator	1
Lead teacher- curriculum support	1

Placement contact person for private day placements	1
Principal	1
Records manager	1
Re-enrollment Coordinator	1
School Nutrition director	1
School Psychologist	1
Social Worker	1

Table 7 continued

Role	n
Special education discipline contact person	1
STC [sic]	1
Supervisor of Guidance and Social Work	1
Title IX coordinator	1
Transportation Coordinator	1
Visiting Teacher	1

Note. N=34

Section 504 division coordinators reported as few as one additional role and as many as nine. It is notable that 26 (76.4%) were also the division's director of special education or assistant director of special education.

Section 504 school administrators' and division coordinators' understanding of Section 504. Section 504 SAs and DCs answered eight similar questions with response scales regarding their procedural knowledge of Section 504. Frequency distributions appear in Table 8. School administrator and division coordinator surveys each had two unique knowledge questions, which are presented separately in Tables 9 and 10. An additional open-ended question for SAs and DCs was analyzed separately and is presented in Table 8.

Table 8

Section 504 School Administrators' and Division Coordinators' Procedural Knowledge of Section 504

Item	Respondent		Respondent	
Response	n	%	n	%
<i>Does your division have a formal, written school board policy concerning Section 504?</i>				
	School Administrators		Division Coordinators	
Yes	269	86.77%	21	77.78%
No	12	3.87%	6	22.22%
Don't know or unsure	29	9.35%	0	0.00%
<i>Does your division have formal, written grievance and hearing procedures for Section 504 disputes?</i>				
	School Administrators		Division Coordinators	
Yes	261	84.74%	24	82.76%
No	7	2.27%	4	13.79%
Don't know or unsure	40	12.99%	1	3.45%
<i>Does your division have specific forms for Section 504 evaluations, eligibility and 504 plans?</i>				
	School Administrators		Division Coordinators	
Yes	303	97.43%	28	96.55%
No	3	0.96%	1	3.45%
Don't know or unsure	5	1.61%	0	0.00%
<i>May students on only Section 504 plans receive special education (instructional services) in your school/division?</i>				
	School Administrators		Division Coordinators	
Yes	84	28.77%	9	32.14%
No	189	64.73%	16	57.14%
Don't know or unsure	19	6.51%	3	10.71%

Table 8 continued

Item	Respondent		Respondent	
Response	n	%	n	%
<i>May students on only Section 504 plans receive related services in your school/division?</i>				
	School Administrators		Division Coordinators	
Yes	175	60.14%	21	72.41%
No	83	28.52%	7	24.14%
Don't know or unsure	33	11.34%	1	3.45%
<i>Do/should you/the Section 504 evaluation team consider the student's eligibility for Section 504 with or without mitigating measures? Some examples of mitigating measures are glasses, a prosthesis and medication.</i>				
	School Administrators		Division Coordinators	
With mitigating measures	156	53.24%	12	42.86%
Without mitigating measures	66	22.53%	12	42.86%
Don't know or unsure	63	21.50%	4	14.29%
Both*	8	2.73%		
<i>To decide whether the student has a substantial limitation that would qualify the student under Section 504, what comparative frame of reference would you/the 504 evaluation team use?</i>				
	School Administrators		Division Coordinators	
Student's educational performance compared to an average student of same age and grade	117	42.09%	17	94.44%
Student's potential educational performance compared to his/her current educational performance	136	48.92%	0	0.00%
Don't know or unsure	25	8.99%	1	5.56%
<i>Must the accommodations given to a student on a Section 504 plan be considered reasonable? In this case, "reasonable" means that the accommodation should not impose an undue hardship on the operation of a school or program.</i>				
	School Administrators		Division Coordinators	
Yes	218	73.65%	22	84.62%
No	41	13.85%	4	15.38%
Don't know or unsure	37	12.50%	0	0.00%

Table 8 presented the results of the procedural knowledge of Section 504 school administrators and division coordinators. Regarding a *formal, written school board policy*, the majority of both groups (86.77% and 77.78% respectively) responded that one was in place. Twenty nine of the SAs (9.35%) were unsure whether such a policy was in place. Twelve SAs (3.87%) and 6 DCs (22.22%) reported that such a policy was not in place.

When asked about *formal, written grievance and hearing procedures*, the majority of school administrators and division coordinators (84.74% and 82.76% respectively) reported that such procedures were in place. One DC was unsure as were 40 SAs (12.99%). Four DCs (13.79%) and seven (2.27%) SAs responded that procedures were not in place.

School administrators (97.43%) and division coordinators (96.55%) confirmed that the division had *specific forms for Section 504 evaluations, eligibility and plans*. Three SAs (.96%) reported that the division did not have such forms as did one DC (3.45%). Five school administrators were unsure.

When asked whether students on 504 plans in the division could have *special education (instructional services)*, 64.73% of the school administrators responded that the students could *not* have such services and 57.14% of the division coordinators concurred. However, 28.77% of the SAs and 32.14% of the DCs indicated that students on 504 plans could receive such services. A smaller percentage of SAs (6.51%) and DCs (10.71%) were unsure or did not know.

Regarding the provision of *related services* to students on 504 plans, school administrators responded affirmatively at 60.14% as did division coordinators at 72.41%. Thirty three of the SAs (11.34%) and one DC (3.45%) were unsure or did not know.

Division coordinators were divided equally when it came to whether *mitigating measures* were to be taken into consideration in Section 504 eligibility decisions with 42.86% reporting that such measures should be considered and 42.86% asserting that the student would be considered *without* such measures. Four DCs were unsure. School administrators were more confident that the student would be considered *with* such measures (53.24%). Conversely, 22.53% of the SAs responded that the student should be considered *without* such measures. An almost equal number (21.50%) of SAs were unsure and eight marked both boxes.

When asked about the comparative standard for determining whether a student had a *substantial limitation*, division coordinators strongly indicated (94.44%) that the correct frame of reference would compare the student's educational performance to an average student of the same age and grade. No DCs chose the student's potential performance standard and one did not know or was unsure. School administrators, however, were almost equally divided with 42.09% confirming that the correct referent was the student's educational performance as compared to an average student, while 48.92% indicated that the correct frame of reference was the student's potential educational performance compared to his/her current educational performance. An additional 8.99% of the SAs did not know or were unsure.

In terms of whether *accommodations* for a student with a 504 plan had to be reasonable, school administrators (73.65%) and division coordinators (84.62%) reported

that accommodations had to conform to the “reasonableness” standard. Similar percentages (13.85% and 15.38%) of SAs and DCs responded that accommodations did not have to conform to the standard while 12.50% of the SAs did not know or were unsure.

The following questions were asked only to school administrators as they were unique to their situations.

Table 9

Additional Questions for Section 504 School Administrators Regarding Procedural Knowledge

Item	n	%
<i>Does your school division have a designated Section 504 Coordinator?</i>		
Yes	281	90.65%
No	24	7.74%
Don't know or unsure	5	1.61%
<i>How often does the evaluation team consider a student for 504 eligibility after finding child ineligible for an IEP under IDEA?</i>		
Always	55	18.90%
Sometimes	226	77.66%
Never	10	3.44%

Table 9 depicted the frequencies for the responses of school administrators to the two unique questions in their survey. The majority of SAs (90.65%) confirmed that their divisions had a *division-level Section 504 coordinator*. Twenty four (7.74%) SAs reported that their divisions did not have a Section 504 coordinator and five (1.61%) were unsure. Regarding the regularity with which the evaluation team considers a student for *Section 504 eligibility after finding the student ineligible for IDEA coverage*, 77.66% of

the SAs indicated that this was *sometimes* done, 18.90% reported that this was *always* done and 3.44% responded that it was *never* done.

The following questions were asked only to division coordinators as the questions were unique to the division coordinators' responsibilities.

Table 10

Additional Questions for Section 504 Division Coordinators Regarding Procedural Knowledge

Item	n	%
<i>Have evaluation teams been advised to consider a student for Section 504 eligibility after finding the student ineligible for an IEP under IDEA?</i>		
Yes	23	88.46%
No	2	7.69%
Don't know or unsure	1	3.85%
<i>Has your division been informed about the changes to Section 504 that accompany the recent amendments to the Americans with Disabilities Act?</i>		
Yes	26	96.30%
No	1	3.70%
Don't know or unsure	0	0.00%

Table 10 provided the division coordinators' answers to their unique survey items. When asked whether evaluation teams had been advised to consider a student for *Section 504 eligibility after finding the student ineligible under IDEA*, 88.46% of the division coordinators responded that the teams had been advised to do so. The timing of the survey occurred just after the reauthorization of the Americans with Disabilities Act. The reauthorized ADA heralded changes in Section 504 procedure, therefore the DCs were asked whether their divisions had been informed about such procedures. A majority (96.30%) responded that divisions had been informed.

Analysis of qualitative item. To assess the extent of the procedural knowledge of Section 504 personnel, school administrators and division coordinators were given an open-ended question asking for a comparison between the intent of Section 504 as compared to the Individuals with Disabilities Education Act (IDEA).

Table 11

Section 504 School Administrators' and Division Coordinators' Responses to Open-Ended Question Comparing Section 504 and IDEA

Item	Respondent			Respondent		
Response	n	%	n	%		
<i>What is the purpose of Section 504 as compared to the Individuals with Disabilities Education Improvement Act (IDEA)?</i>						
	School Administrators			Division Coordinators		
To provide equal access; eliminate barriers or "level the playing field"	64	26.23%	11	47.83%		
To provide accommodations	39	15.98%	4	17.39%		
To assist students who do not qualify for special education	43	17.62%	3	13.04%		
To provide help for students with medical problems	24	9.84%	0	0.00%		
To provide temporary help	5	2.05%	0	0.00%		
To prevent discrimination	27	11.07%	1	4.35%		
Broad comparison or reiteration of Section 504 criteria	40	16.39%	4	17.39%		
Did not know/were unsure	2	0.82%	0	0.00%		

Table 11 provided a frequency analysis of the responses of school administrators and division coordinators to an open-ended question asking for a comparison of the intent

of Section 504 and the Individuals with Disabilities Education Act. The researcher used a quasi grounded theory approach in categorizing the responses. School administrators and division coordinators most often responded (26.23% and 47.83%, respectively) that the purpose of Section 504 was to provide access or eliminate barriers to general education programs or curricula or to “level the playing field”. Some SAs (15.98%) and DCs (17.39%) indicated that the purpose of Section 504 was to provide accommodations alone, with no other larger intent stated. A percentage of SAs (17.62%) and DCs (13.04%) reported that the intent of Section 504 was to assist students who did not qualify for special education services under IDEA. Some school administrators reported that purpose of Section 504 was to serve students with medical problems (9.84%) or provide temporary help (2.05%), while no DCs reported such intent. Prevention or elimination of discrimination was cited by 11.07% of the SAs and 4.35% of the DCs. Finally, 16.39% of the SAs and 17.39% of the DCs made broad comparisons of the two statutes (e.g., “504 is general ed and IDEA is special ed”) or simply reiterated the eligibility criteria for Section 504 (e.g., “Section 504 assists students with a physical or mental impairment....”). Two SAs indicated that they were unsure of the difference.

Research Question Cluster 2: Training

This cluster of research questions examined the state of training in Virginia schools on Section 504, specifically investigating to whom training is directed, how helpful it is, and how often it was provided. To further investigate the impact of training on the implementation of Section 504 in Virginia, division coordinators comments regarding school division personnel’s Section 504 inquiries; due process hearing officers’

decisions; division coordinators' reports of Office for Civil Rights complaints; and Office for Civil Rights complaint resolution letters were reviewed and analyzed.

School administrators' and division coordinators' report of Section 504 training.

School administrators and division coordinators were given four questions with response scales regarding training. If respondents did not know when training had last been given at their schools/divisions, they were advised to skip the following three questions.

Frequency distributions appear in Table 12.

Table 12

Section 504 School Administrators' and Division Coordinators' Report of Section 504

Training in their Divisions

Item Response	Respondent		Respondent	
	n	%	n	%

When was the last time training was conducted in your school/division concerning Section 504?

	School Administrators		Division Coordinators	
This current academic year	148	47.59%	11	42.31%
Last academic year	47	15.11%	5	19.23%
2 to 5 years ago	44	14.15%	8	30.77%
More than 5 years ago	12	3.86%	2	7.69%
Don't know or unsure	60	19.29%	0	0.00%

Please identify the group(s) that received training during the most recent Section 504 training conducted in your school (check all that apply).

School Administrators		Division Coordinators	
Special educators	129	Guidance counselors	17
Guidance counselors	120	Special educators	10
General educators	81	General educators	7
Entire School	45	Other	9
Other	16	Entire school	3

Table 12 continued

Item Response	Respondent		Respondent	
	n	%	n	%
<i>How helpful was the most recent training?</i>				
	School Administrators		Division Coordinators	
Very helpful	69	27.82%	12	48.00%
Helpful	121	48.79%	8	32.00%
Somewhat helpful	58	23.39%	5	20.00%
Not helpful	0	0.00%	0	0.00%
<i>Who provided the training?</i>				
	School Administrators		Division Coordinators	
School division personnel	209	83.60%	19	86.36%
Outside expert	23	9.20%	3	13.64%
Other	11	4.40%	0	0.00%
School division personnel & outside expert	7	2.80%	0	0.00%

Table 12 provided frequency data on Section 504 training for schools and school divisions. Most school administrators (47.59%) and division coordinators (42.31%) reported that *training on Section 504* had been given during the academic year in which the survey was conducted. The second most frequent answer for school administrators was *don't know or unsure* at 19.29%. Division coordinators' second most frequent answer was *2 to 5 years ago* at 30.77%.

School administrators and division coordinators identified special educators and guidance counselors as the *most frequently trained groups*. School administrators also identified seven additional groups that included administrative personnel under *other*. Division coordinators identified five such groups under *other*.

Division coordinators most frequently rated the training as *very helpful* at 48%, while school administrators found the training *helpful* most frequently at 48.79%. Neither

group identified the training as *not helpful*. Training was delivered most often to both groups by school division personnel.

The following questions were directed only to the division coordinators.

Table 13

Section 504 Division Coordinators' Additional Report of Section 504 Training

On average, how often do school personnel or administrators seek assistance with Section 504 issues/matters?

1 - 4 times a semester	14	46.67%
5 - 9 times a semester	7	23.33%
10 - 15 times a semester	4	13.33%
Other	4	13.33%
Never	1	3.33%

To your knowledge, has your division ever requested that an attorney review your Section 504 procedures?

Yes	10	37.04%
No	15	55.56%
Don't know or unsure	2	7.41%

Table 13 indicated that most (46.67%) division coordinators are contacted as infrequently as 1 – 4 times a semester by *school personnel seeking assistance with Section 504*. One DC reported *never* being contacted for such information. When asked whether their divisions had asked *an attorney to review their Section 504 procedures*, the majority (55.56%) reported that no such request had been made.

To further examine the state of training in Virginia, the researcher reviewed and categorized Section 504 division coordinators' comments regarding frequent Section 504 inquiries from school division personnel; Virginia Department of Education due process

hearing officers' decisions; division coordinators' reports of Office for Civil Rights complaints; and OCR resolution letters for 2005-2008.

Analysis of Section 504 division coordinators' comments regarding Section 504 inquiries. The survey for division coordinators had a set of open-ended questions designed to gather information about frequently discussed aspects of Section 504. Their comments are provided in Table 14.

Table 14

Frequent Inquiries for Section 504 Division Coordinators

Issue	Detail
<i>What aspects of Section 504 do school personnel or administrators seek assistance with most often? Please choose most frequent and give details.</i>	
Eligibility	<p>Questions regarding substantial limitation of major life activity criteria (2)</p> <p>Health/medical plan v. 504 plan questions (2)</p> <p>If child is academically successful, is child still eligible?</p> <p>New ADA regulations</p> <p>Not sure of difference between IDEA & 504 in some instances</p> <p>Questions regarding students not eligible for IDEA</p> <p>Seeking guidance and/or documentation of a mental or physical disability (2)</p> <p>Continued eligibility when student doesn't use or need accommodations any longer?</p> <p>Confused about what makes them eligible for services (2)</p>
Discipline	<p>Creating behavior plans as part of 504 plan (2)</p> <p>Following special education (IDEA) regulations (3)</p> <p>Should 504 students have a manifestation determination review (MDR)? (5)</p>
Dispute resolution	<p>Procedures direct them to me</p> <p>We work on smoothing relationships--parents/teachers, parents/administrators</p>

Table 14 continued

Issue	Detail
Accommodations	Appropriate accommodations (5) Determining what accommodations are permissible for on state assessments (2) Good teaching for all vs. accommodations for one student How often/when to provide accommodations (2) Ideas for accommodations for a given student/situation. Making accommodations more specific Teachers who do not implement accommodations systematically Therapy or no therapy, what time [sic]of accommodations
Other	General information is forgotten due to infrequency of some issues Developing 504 plan How to work out issues specific to certain students Avoiding development of 504 plans just for testing Placement and/or service Small division--questions are answered one-on-one Coordinating with other agencies

Table 14 contained the division coordinators comments regarding Section 504 issues for which they provide *assistance most frequently*. Division coordinators reported that *accommodations* for students on 504 plans as the most frequently addressed topic. Most of the inquiries reported by DCs pertained to choosing appropriate accommodations, including choosing accommodations for state assessments. Other queries involved frequency and specificity of accommodations. *Eligibility for Section 504* was the next most frequently addressed topic, with questions concerning the substantial limitation requirement, whether to provide a health plan or a 504 plan, documentation of mental or physical disability and eligibility in general appearing most often. Questions

about *discipline* less frequently were addressed but focused on three concerns: whether or not to have a manifestation determination hearing/review, following IDEA regulations in disciplining students with 504 plans and creating behavior plans.

Analysis of Virginia due process hearing officers' decisions. Section 504 requires that public elementary and secondary schools provide procedural safeguards to students and parents that include an impartial hearing and a review procedure. Therefore, Section 504 disputes that cannot be resolved without third party assistance may be found on the docket of the Virginia Department of Education's Due Process Hearing Officers. The researcher reviewed the VDOE's Office of Dispute Resolution and Administrative Services Issue Index for 2001-2008. During this period, there were 204 decisions. In 11 of these decisions, Section 504 was invoked. Table 15 provides information on the years and issues of 504-related due process hearings.

Using a quasi grounded theory approach, the researcher excerpted sections of the decisions that provided guidance on the implementation of Section 504. It is important to note that only one of these decisions concerned a student who was covered only under Section 504. In the other cases, Section 504 was invoked by the complainant because every student who is covered under the Individuals with Disabilities Education Act is also covered under Section 504 and each claim must duly be considered under all applicable statutes. Results are provided in Table 15.

Table 15

Virginia Due Process Hearing Officers' Decisions Regarding Section 504

Case number/ School year	Issue	Resolution	Guidance on Section 504
02-078/ 2002 - 2003	Whether the student's rights under Section 504 were violated?	Procedural problems with the IEP did not deny the child's right to a FAPE.	Neither eating, naps, a shortened school day nor field trips were handled in a discriminatory manner that might violate Section 504. ^a
02-065/ 2002 - 2003	Whether school division violated Section 504 relative to disciplining student?	Student had a 504 plan first and then an IEP.	Hearing officer very briefly states that the school division did not discriminate against the student when it disciplined him for having marijuana on school grounds. ^b
02-108/ 2002 - 2003	Whether § 504 of the Rehabilitation Act was violated?	Initially, the student was not eligible for services under IDEA or Section 504. Later found eligible for an IEP, but not as quickly as would have been expedient.	Hearing officer cites the extraordinarily high standards/subject to discrimination/bad faith & gross misjudgment standard from Sellers (141 F 3 rd at 529). Officer finds that although the school division delayed 18 months, they did not meet the foregoing standard. Also, at time of hearing, student was covered under IDEA. ^c
03-062/ 2002 - 2003	Whether school division discriminated against the child thereby violating § 504 of the Rehabilitation Act?	School did not provide an appropriate IEP and parents were reimbursed for private school placement for child with severe autism. Child was never placed in a public school therefore Section 504 coverage is not available.	504 claim was dismissed. ^d

Table 15 continued

Case number/ School year	Issue	Resolution	Guidance on Section 504
03-087/ 2003 – 2004	Whether § 504 of the Rehabilitation Act was violated?	IEP is to be rewritten and services provided.	Proposed IEP was not appropriate under either IDEA or Section 504 because it did not provide for an appropriately qualified sign language interpreter among other accommodations. ^e
04-114/ 2004 – 2005	Whether student was eligible to receive services and protection under Section 504 of the Rehabilitation Act of 1973?	Student is not eligible for services under either IDEA or Section 504	Hearing officer acknowledged that while student may "suffer from some disorder that causes him difficulties in reading comprehension" (p. 3), "inability and difficulty are not synonymous" (p. 9). Student is reading "almost on grade level" and passed a 9th grade SOL in the eighth grade. Hearing officer found no significant limitation, therefore no 504 eligibility (p. 9). ^f
04-096/ 2004 – 2005	Whether the student was eligible for services under the IDEA and Section 504 of the Rehabilitation Act of 1973? (sole issue)	Student has a learning disability under both IDEA and Section 504.	Hearing officer found that "because such disabilities substantially limit his learning, as Dr. ----- demonstrated, the fact that he is able to earn average grades and be promoted does not qualify him under IDEA or Section 504" (p. 4). Hearing officer reported that the division was at fault, having based its testimony and testing on observations made while the student was "under a therapy [Adderall] that muted or disguised his disability" (p. 4). ^g

Table 15 continued

Case number/ School year	Issue	Resolution	Guidance on Section 504
05-015/ 2004 – 2005	Whether the student has been discriminated against by the school division because of a delay in establishing a certain placement thereby warranting relief under Section 504?	Parent failed to establish case under IDEA or Section 504.	Hearing officer cited the "prohibitory" nature of Section 504 as an anti-discrimination statute. As such, it "demands far less of covered entities than does IDEA." He further cites the "extraordinarily high" standard of proving a claim under Section 504, noting that only decisions made in "bad faith or gross misjudgment" were eligible for damages. The parent's "sketchy factual presentation" is insufficient to support his Section 504 claim (p. 32). ^h
05-053/ 2004 – 2005	Whether a parent's request for a due process hearing under Section 504 of the Rehabilitation Act of 1973 is time barred for events that occurred more than one year prior to the request? (sole issue)	Due process hearing was not held because one year statute of limitations had been exceeded. ⁱ	
05-079/ 2004 – 2005	Whether there was discrimination against the student in violation of Section 504 of the Rehabilitation Act when the student was suspended and transferred to another school building?	Student with disciplinary infraction was found not eligible for IDEA but eligible for Section 504 services after the infraction.	Despite the student's presence on the honor roll at times in middle school, lack of a serious discrepancy in achievement, classroom function and grades, average general ability and the evidence of academic progress, student was found eligible for a 504 plan (no additional information given). ^j

Table 15 continued

Case number/ School year	Issue	Resolution	Guidance on Section 504
07-057/ 2007 - 2008	Whether the student who has a history of developmental delay and has been diagnosed with mood disorder, anxiety disorder and attention hyperactivity disorder but is not limited in the life activity of learning, is eligible for services under Section 504 of the Rehabilitation Act of 1973?	Student became ineligible for IDEA services and was not eligible under Section 504	Hearing officer cited a decision in which OCR had stated "a person who is succeeding in regular education does not have a disability which substantially limits the ability to learn" (p.18). ^k

Note. ^aVDOE, HOD 02-078, n.d.; ^bVDOE, HOD 02-065, n.d.; ^cVDOE, HOD 02-108, n.d.; ^dVDOE, HOD 03-062, n.d.; ^eVDOE, HOD 03-087, August 25, 2003; ^fVDOE, HOD 04-114, July 12, 2004; ^gVDOE, HOD 04-096, July 26, 2004; ^hVDOE, HOD 05-015, February 2, 2005; ⁱVDOE, HOD 05-053, March 14, 2005; ^jVDOE, HOD 05-079, April 18, 2005; ^kVDOE, HOD 07-057, August 6, 2007.

Table 15 displayed the issues, resolution and guidance on Section 504 provided by the Virginia Department of Education's Due Process Hearing Officers for 2001 – 2008. When hearing officers were asked to provide Section 504 guidance on *eligibility*, specifically the substantial limitation requirement of the law, results were mixed. In two of the cases, hearing officers cited the student's acceptable progress in the general education classroom as evidence that the student did not meet the substantial limitation standard, while in two other cases, one student was found eligible despite average progress in his classes and the eligibility of another student rested heavily on the

documentation provided by a doctor, again in spite of average progress. In the case of the doctor's diagnosis, the hearing officer addressed mitigating measures, stating that the student's evaluations may have been inadequate as they had been conducted while the student was on medication for ADHD.

Four of the decisions concerned *discrimination* claims under Section 504 and again, results were mixed. In two of the cases, officers briefly reviewed the claims to determine whether other students had been treated similarly and, if so, the actions of the school division were determined to be non-discriminatory. In the other cases, hearing officers did not undertake such comparisons, but instead cited the historic difficulties in proving such a case, each using similar case law citations. In the cited case law, the decision stated that the school division would have had to acted in "bad faith and gross misjudgment" (*Sellers by Sellers v. The School Board of Manassas*, 1998) to be liable for a claim of discrimination. In one the cases under scrutiny, the hearing officer ordered the IEP team back into session to create an appropriate IEP after a delay of 18 months had prevented appropriate services for the student.

In one of the remaining cases, the hearing officer found that the *accommodation* of a sign language interpreter was warranted under both IDEA and Section 504. Finally, one case was dismissed and one fell outside the statute of limitations for a hearing.

Division coordinators' report of Office for Civil Rights complaints. Division coordinators' surveys had an additional item regarding complaints to the Office for Civil Rights filed in their divisions. Frequency data and details appear in Table 16.

Table 16

Division Coordinators' Reports of Office for Civil Rights Complaints

Item	Response	n	%
<i>To your knowledge, has an Office for Civil Rights complaint alleging a violation of Section 504 ever been filed against your school division?</i>			
Yes (please give details)		2	8.70%
No		20	86.96%
Don't know or unsure		1	4.35%
Details			
Failure to follow 504 plan			
Access and space issues in facilities (3)			
Expulsion of student for distribution of drugs			
Implementation of accommodations			
MDH/R not done			

Table 16 showed that the majority (86.96%) of division coordinators reported that *complaints to OCR* had not been filed in their divisions. Two reported that complaints had been filed but five responses were given in the details section. The most common OCR complaint regarded access and space issues in buildings.

Analysis of resolution letters provided by the Office for Civil Rights. The researcher's Freedom of Information Act (FOIA) request asked for all resolution letters related to students with only Section 504 coverage in Virginia's elementary or secondary schools during the years 2005 to 2008. An initial response from OCR indicated that they would be unable to separate the 504-only resolutions from those involving students with IEPs and claims of racial or sexual harassment, retaliation, disability discrimination, and impeded physical accessibility. Therefore, the researcher was sent an electronic

compilation of 62 letters that met the requirement of having originated in Virginia, involving elementary or secondary schools and been investigated by OCR under Section 504. However, a second request had to be made as date parameters were not met by the initial request. In response to the second request, the Office for Civil Rights provided paper copies of 7 resolution letters that involved only Section 504 students. With this second response, OCR verified that the FOIA request had been satisfied. Of the resulting 15 letters that meet the criteria, 5 had been resolved prior to an investigation by OCR. The OCR offers an early complaint resolution (ECR) process that may facilitate an agreement by both parties, removing the complaint from OCR's purview. OCR does not monitor such agreements. In such cases, full details on the complaint and the agreement are not included in the resolution letter, with one exception in which the researcher was sent the resulting agreement between parent and school division. One letter that did not involve a student on a Section 504 plan was included in this review as it gave guidance on OCR expectations regarding eligibility. Using a quasi grounded theory approach, the researcher analyzed the letters with the intent of assessing the Virginia's compliance with Section 504. The results are provided in Table 17.

Table 17

Analysis of Office for Civil Rights Complaint Resolution Letters

Complaint Number	Finding	Preemptive Action	Issue(s)	OCR Concern/Comment
11-05-1180 ^a	Insufficient Evidence		Failure to provide 504 services	"OCR would remind the division that Section 504 regulations require that records of the decisions with regard to a student with a disability be maintained; this should include supporting information. Although the Division told OCR that the coordinator met with teachers, no records were maintained; the Division reported that the Complainant was invited to several meetings that she failed to make, but there was no documentation of these actions" (p. 3) ^a
11-05-1169 ^b	Insufficient Evidence		Repeated suspensions with no MDH; Failure to re-evaluate; Failure to implement accommodations	"If student's behavior continues to be a concern during the current school year, the Division [should] consider convening The Team to consider further evaluation" (p. 5) When progress reports are made a part of a student's 504 plan, staff and case manage must ensure that the student knows where to retrieve them. ^b
11-05-1215 ^c	Division signed a Voluntary Agreement		Repeated suspensions with no MDH; Staff not notified of 504 plan; Failure to implement accommodations	
11-05-1223 ^d	Insufficient Evidence	Division changed procedure during the investigation to ensure that copies of procedural safeguards were given.	Failure to provide copy of 504 appeal procedures or 504 plan; Failure to implement accommodations	

Table 17 continued

Complaint Number	Finding	Preemptive Action	Issue(s)	OCR Concern/Comment
11-05-1242 ^e	Insufficient Evidence	Division agreed to change form prior to next summer session	Failure to implement accommodations; Staff was not aware of 504 Plan	Division's summer school application had a place to indicate an IEP, but not a 504 plan. "...OCR notes problem with Division's method of notifying student's summer school instructor of his 504 plan..." (p. 6). ^e
11-05-1270 ^f	Division signed a Commitment to Resolve		Failure to evaluate	Division's policy of not evaluating students even when there was reason to believe that special education and related services might be needed "...does not provide parents with their due process rights, and the student has no record of modifications determined by an appropriately constituted Section 504 or IEP team to substantiate the need for similar modifications in high-stakes testing situations" (p. 4). ^f
11-06-1170 ^g	Insufficient Evidence		Failure to implement accommodations	
11-06-1236 ^h	Insufficient Evidence		Failure to implement accommodations; Staff was not aware of 504 Plan	"OCR suggests that the Division take steps to ensure that Exploratory [course] teachers receive copies of students' 504 plans and are aware of their obligation to implement them, regardless of the short duration of the courses" (p. 7) ^h
11-06-1147 ⁱ	Division signed Voluntary Agreement to re-evaluate the student		Denial of 504 eligibility	OCR invoked the "extraordinary circumstances" provision of the law to review an individual placement decision. Concerns regarding the consistency of division's decision with Section 504 regulations. Evidence from student's doctor that peanut/tree nut allergy was life-threatening was not contradicted by any other evidence. Additionally, severe harm to student could result (p. 4). ⁱ
11-08-1159 ^j	Early Complaint Resolution		Failure to implement accommodations	

Table 17 continued

Complaint Number	Finding	Preemptive Action	Issue(s)	OCR Concern/Comment
11-08-1176 ^k	Early Complaint Resolution		Failure to approve an accommodation	ECR copy included: division agrees to clarify 504 plan language and discuss "credit recovery program" with student and complainant (p. 2). ^k
11-08-1143 ^l	Insufficient Evidence		Failure to implement accommodations	
11-08-1240 ^m	Early Complaint Resolution		Staff was not aware of 504 plan	
11-08-1300 ⁿ	Early Complaint Resolution		Denial of 504 eligibility	
11-08-1260 ^o	Not a 504 case			"Although not an issue in this case, the Division should be aware that there are...situations in which there is reason to believe that a student may have a physical or mental impairment that substantially limits a major life activity. Even if the Division is providing services to the student, the Division must evaluate the student to determine if he is covered by Section 504--at the very least, the student would then be entitled to due process rights regarding and disagreement about the existence of a disability and the nature of the services" (p. 6) ^o
11-09-1039 ^p	Early Complaint Resolution		No details provided	

Note. ^aOCR (August 29, 2005). Complaint No.:11-05-1180; ^bOCR (October 21,2005). Complaint No.:11-05-1169; ^cOCR (November 7, 2005). Complaint No.:11-05-1215; ^dOCR (December 9, 2005). Complaint No.:11-05-1223; ^eOCR (January 1, 2006). Complaint No.:11-05-1242; ^fOCR (February 17, 2006). Complaint No.:11-05-1270; ^gOCR (October 11, 2006). Complaint No.: 11-06-1170; ^hOCR (October 18, 2006). Complaint No.:11-06-1236; ⁱOCR (January 8, 2007). Complaint No.:11-06-1147; ^jOCR (May 19, 2008). Complaint No.:11-08-1159; ^kOCR (July 16, 2008). Complaint No.:11-08-1176; ^lOCR (August 19, 2008). Complaint No.:11-08-1143; ^mOCR (September 9, 2008). Complaint No.:11-08-1240; ⁿOCR (November 6, 2008). Complaint No.:11-08-1300; ^oOCR (January 16, 2009). Complaint No.:11-08-1260;

^POCR (January 29, 2009). Complaint No.:11-09-1039.

Table 17 provided excerpted details on the Virginia Section 504-only complaints received by the Office for Civil Rights during the 2005-2008 period. In three complaints, the school division signed either a voluntary agreement or a commitment to resolve the issue(s). In the case in which the division signed a voluntary agreement, the issues involved repeated suspensions with no manifest determination hearing/review (MDH/R), failure to implement accommodations and the failure of the school to inform the student's teachers of a 504 plan. In one of the cases, the division signed a commitment to resolve when OCR found that the division policy of providing interventions/accommodations without a formal evaluation and failing to monitor them deprived the student and parent of due process rights. The final case in which the division voluntarily agreed to review their eligibility decision for a student with a life-threatening peanut/tree nut allergy was discussed previously.

The remaining seven cases did not present sufficient evidence of violations upon investigation by OCR. In two of the cases, the school division took what may have been preemptive actions during the OCR investigation. One such complaint involved a claim of failure to implement accommodations and make the staff aware of the student's 504 plan during a summer school class. In this case, the division agreed to change the summer school form to include a box to indicate a 504 plan was in effect. In the other case, the school agreed to change its procedure to ensure that parents were given copies of procedural safeguards and other 504 documents in a more consistent manner.

The additional five cases that were found to present insufficient evidence included claims of repeated suspensions with no MDH/R; failure to re-evaluate; failure to

implement accommodations; failure to provide services; and failure to inform staff of the student's 504 plan.

In several of the cases OCR stated "suggestions" or "concerns" that were noteworthy. In one case, OCR advised the division to monitor a student's behavior for as an indicator of need for a re-evaluation. In others, OCR reminded the division to maintain adequate documentation in one case and clarify the location for certain forms that a student was required to retrieve in another. In a case where the claim was that staff had not been informed of a student's 504 plan, OCR advised the divisions to make sure that all teachers received this information. Finally, in the case of a parent who reported harassment and discrimination of a student who did not have a 504 plan, OCR counseled the division to be proactive with Section 504 evaluations when the division becomes aware that a student might meet eligibility criteria.

Research Question Cluster 3: Data

The Office for Civil Rights does not collect nor require states to report data on Section 504. Therefore, no data exist on any aspect of Section 504 (Bonnie English, personal communication, 2009). Research question cluster 3 attempted to provide data on students in Virginia with 504 plans, including their ethnicities and genders. Details on 504 plans also were collected, including prevalence data on impairments served and major life activities limited. Additionally, data on accommodations were gathered. In the case of impairments, major life activities and accommodations, respondents could check or enter as many as applied. Respondents were asked for data on students who had 504 plans alone (not also covered by the Individuals with Disabilities Education Act). All

data came from the survey of Section 504 school administrators and division coordinators.

Table 18

Section 504 School Administrators' Report of Students with 504 Plans

Characteristic	n	%
<i>Students with 504 Plans</i>	2224	1.17%
<i>Gender</i>		
Male	1447	65.06%
Female	766	34.44%
<i>Ethnicity</i>		
White	1597	71.81%
Black	549	24.69%
Hispanic	46	2.07%
Asian/Pacific Islander	25	1.12%
Unspecified	13	0.58%
American Indian/Alaskan native	2	0.09%
Hawaiian/Other Pacific Islander	0	0.00%

Note. Percentages for gender and ethnicity do not add to 100.

Table 19

Section 504 Division Coordinators' Report of Students with 504 Plans

Characteristic	n	%
<i>Students with 504 Plans</i>	2194	1.25%
<i>Gender</i>		
Male	958	43.66%
Female	553	25.21%
<i>Ethnicity</i>		
White	1012	46.13%
Black	437	19.92%
Unspecified	32	1.46%
Hispanic	24	1.09%
Asian/Pacific Islander	10	0.46%
American Indian/Alaskan native	0	0.00%
Hawaiian/Other Pacific Islander	0	0.00%

Note. Percentages for gender and ethnicity do not add to 100.

Table 20

Section 504 School Administrators' Report of Impairments Served

Impairment	n	%
ADHD	1267	60.56%
Learning disabilities	140	6.69%
Diabetes	89	4.25%
Other impairments*	83	3.97%
Hearing impairment	64	3.06%
Reading difficulties	61	2.92%
Information not available in records	57	2.72%
Asthma	44	2.10%
Visual impairment	39	1.86%
Emotional disability	27	1.29%
Depression	26	1.24%

Dyslexia 24 1.15%
 Table 20 continued

Impairment	n	%
Epilepsy	19	0.91%
Oppositional defiant disorder	19	0.91%
Crohn's disease	16	0.76%
Cerebral palsy	12	0.57%
Peanut/tree nut allergy	12	0.57%
Mental retardation/intellectual disability	10	0.48%
Arthritis	9	0.43%
School phobia	9	0.43%
Kidney disease	8	0.38%
Physical/sexual abuse	8	0.38%
Tourette syndrome	8	0.38%
Heart disease/cardiac impairment	7	0.33%
Hemophilia	7	0.33%
Post traumatic stress disorder	7	0.33%
Suicidal tendencies	7	0.33%
Conduct disorder	6	0.29%
Chronic fatigue syndrome	3	0.14%
Multiple Sclerosis	2	0.10%
Social maladjustment	2	0.10%
AIDS HIV	0	0.00%
Drug alcohol abuse	0	0.00%
Eating disorders	0	0.00%
Hyperthyroidism	0	0.00%
Sexually transmitted diseases	0	0.00%

Note. Students may have multiple impairments. School administrators could choose as many impairments as were listed in students' records. *Impairments reported under *other* are listed in Table 24.

Table 21

Section 504 Division Coordinators' Report of Impairments Served

Impairment	n	%
ADHD	824	63.43%
Diabetes	77	5.93%
Learning disabilities	75	5.77%
Other impairments*	58	4.46%
Asthma	47	3.62%
Depression	36	2.77%
Visual impairment	32	2.46%
Hearing impairment	25	1.92%
Peanut/tree nut allergy	17	1.31%
Reading difficulties	14	1.08%
Epilepsy	13	1.00%
Posttraumatic stress disorder	12	0.92%
Oppositional defiant disorder	11	0.85%
Arthritis	10	0.77%
Conduct disorder	8	0.62%
Tourette syndrome	8	0.62%
Cerebral palsy	6	0.46%
Dyslexia	5	0.38%
Heart disease/cardiac impairment	5	0.38%
Chronic fatigue syndrome	3	0.23%
Crohn's disease	3	0.23%
Hemophilia	3	0.23%
Social maladjustment	3	0.23%
Kidney disease	2	0.15%
Eating disorders	1	0.08%
Emotional disability	1	0.08%
AIDS/HIV	0	0.00%
Drug/alcohol abuse	0	0.00%
Hyperthyroidism	0	0.00%
Mental retardation	0	0.00%
Multiple sclerosis	0	0.00%
Physical/sexual abuse	0	0.00%

Table 21 continued

Impairment	n	%
School phobia	0	0.00%
Sexually transmitted diseases	0	0.00%
Suicidal tendencies	0	0.00%
Information not available in records	0	0.00%

Note: Students may have multiple impairments. Division coordinators could choose as many impairments as were listed in students' records. *Impairments reported under *other* are listed in Table 24.

Table 22

Section 504 School Administrators' Report of Major Life Activities Impacted

Major Life Activity	n	%
Learning	1564	70.17%
Accessing learning	376	16.87%
Performing manual tasks	62	2.78%
Hearing	44	1.97%
Working	42	1.88%
Seeing	35	1.57%
Breathing	32	1.44%
Walking	29	1.30%
Sitting	20	0.90%
Other*	18	0.81%
Speaking	4	0.18%
Reaching	2	0.09%
Stooping	1	0.04%

Note. Students may have multiple major life activities indicated in the records. School administrators could choose as major life activities as were listed in students' records. *Major life activities reported under *other* are listed in Table 25.

Table 23

Section 504 Division Coordinators' Report of Major Life Activities Impacted

Major Life Activities	n	%
Learning	527	66.21%
Accessing learning	122	15.33%
Performing manual tasks	48	6.03%
Hearing	25	3.14%
Walking	20	2.51%
Seeing	19	2.39%
Working	14	1.76%
Breathing	9	1.13%
Other*	7	0.88%
Speaking	2	0.25%
Sitting	1	0.13%
Reaching	1	0.13%
Stooping	1	0.13%

Note. Students may have multiple major life activities indicated in the records. Division coordinators could choose as major life activities as were listed in students' records.

*Major life activities reported under *other* are listed in Table 25.

In Tables 18, 19, 20, 21, 22, and 23, the *numbers, genders, ethnicities, impairments, and major life activities* of Virginia's students with 504 plans as reported by school administrators and division coordinators were displayed. The SAs reported 2224 students with 504 plans and the DCs reported 2194 students on 504 plans within their populations. Students on 504 plans in Virginia are most often male and White. The impairment most frequently served was ADHD, followed by diabetes and learning disabilities for division coordinators and learning disabilities and diabetes for school administrators. The major life activity cited most frequently was learning, followed by accessing learning.

School administrators and division coordinators were given the opportunity to report additional impairments under *other*. The results appear in Table 24.

Table 24

Section 504 School Administrators' and Division Coordinators' Responses to Other Impairments

Respondent	Impairment
School Administrators	Division Coordinators
ADD/Attention/Executive function (22)	Acquired brain/head injury (3)
Allergies, including food allergies (6)	Acute disseminated encephalomyelitis
Anemia	ADD
Anxiety (7)	Anxiety (35)
Atopia dermatitis	Asperger's syndrome (5)
Auditory processing (7)	Auditory processing disorders (14)
Autism/Asperger's (17)	Benign congenital hypotonia
Beckwith-Wiederman Syndrome	Bipolar disorder (4)
Bipolar disorder	Injury: broken arm (3); fractured leg; injured writing hand; physical injury (2)
Bladder	Cancer (2)
Brain bleed/injury/cerebral infarct (9)	Celiac disease
Brain Tumor	Chronic back pain
Brittle bone disease	Chronic bladder incontinence
Cancer/Leukemia (10)	Chronic inflammatory demyelinating polyneuropathy
Celiac disease	Congenital anomaly of bladder
Chiari Malformation	Congenital radioulnar synostosis
Childhood illness	Dwarfism
Congenital rib malformation	Dysgraphia
Cystic Fibrosis (5)	Dyslexia
Depression & ADHD	Effects of stroke
Developmentally delayed (11)	Effects of surgery (arm shoulder) (2)
Diabetes insipidous, dilopia, nystagmus	Effects of treatment for brain tumor
Dwarfism	Effects of treatment for cancer (3)
Dysfunctional voiding	Erb's palsy (2)
Dysgraphia (5)	Gastroesophageal reflux

Table 24 continued

Respondent	Impairment
Ehler-Danlos (2)	Glycogen storage disease
Extreme short stature	Irritable bowel syndrome (3)
Fine/gross motor (3)	Keratoderma
Focus Disorder	Ketogenic glycemia
Fused fingers from birth	Knee surgery
Gauchers Disease	Lactose intolerance/constipation
Hirschsprung's Disease	Malformed dominant hand
Hypogammaglobulinemia	Medical (9)
Hypoglycemia	Memory disorder
Irritable bowel syndrome (10)	Migraines (3)
Immune disease/deficiency (3)	Mood disorder (6)
Injury: broken arm (6); fractured vertebrae (1); car accident (1); limited use of hand due to injury; burn	Motor dyspraxia
KTS [sic]	Moya moya disease
Legg-Calve-Perthes disease (2)	Neurofibromatosis
Low Thyroid	Obesity
Lung collapse (1)	Obsessive compulsive disorder
Lupus (3)	Oculocutaneous albinism
Lyme disease (2)	Other Health Impaired (2)
Math difficulties (2)	Occupational Therapy (4)
Medical not listed (2)	Pervasive developmental disorder
Meningitis	Physical Therapy (2)
Migraines (7)	Schizo-affect
Multiple physical dysplasia	Scoliosis (3)
Muscular dystrophy (4)	Selective mutism
Obsessive compulsive disorder (3)	Severe atopic dermatitis
Other health impaired (3)	Sickle cell anemia (5)
Orthopedic impairment (4)	Slow progress
Occupational therapy/Physical therapy (3)	Spina bifida (3)
Pain	Spinal cord injury(2)
Post recovery from severe medical disease	Turner syndrome
POTTS [sic]	Various physical conditions (13)
Premature birth/oxygen deprivation (2)	Visual motor integration
Reflex sympathetic dystrophy	Visual processing
Renal (6)	
Scoliosis	

Table 24 continued

Respondent	Impairment
	Seizure disorder (3)
	Selective mutism (2)
	Sensory integration disorder (2)
	Sickle cell anemia (5)
	Significant based weakness
	Silver-Russell syndrome
	Sound sensitivity
	Spastic dysplasia w quadri-paresis
	Spastic quadriplegia
	Speech language (10)
	Spina bifida
	Spinal injury
	Stomach migraine
	Stroke
	Test anxiety
	TR disorder [sic]
	Tremors
	Ulcerative Colitis
	UV Sensitivity
	Vasculitis
	Vision impairment
	Visual and auditory processing deficits
	Writing Disability

School administrators and division coordinators reported a great number of *other* impairments served under 504 plans in Virginia, as indicated in Table 24. School administrators named 83 additional impairments in addition to those provided on the survey. The most common other impairment was attention deficit disorder/attention/executive function limitations (22), followed by autism/Asperger's syndrome (17), developmental delay (11), cancer/leukemia (10), irritable bowel

syndrome (10), and speech-language impairments (10). Division coordinators reported 58 additional impairments, the most common of which was anxiety (35), followed by auditory processing disorders (14), and “various physical conditions” (13).

School administrators and division coordinators were given an opportunity to enter additional major life activities under *other*. The results are displayed in Table 25.

Table 25

Section 504 School Administrators and Division Coordinators' Responses to Other Major Life Activities

Respondent	Major Life Activity
School Administrators	Division Coordinators
Bathroom access/nurse (2)	Eating
Attendance (13)	Caring for oneself (5)
Carry book bag	Self-control (8)
Ciliary dyskinesia	Concentrating
Coping with change & sometimes people	Physical limitation
Diabetes management (4)	Working
Eye care	Communicating
Fatigue	
Kidney function	
Medical (2)	
Safety	
Self-care (2)	
Sitting/lying to standing (1)	
Social interactions/socialization (3)	
Transportation	
Urination	
Writing (2)	
Unable to access PE	

Table 25 provided the additional major life activities cited by school administrators and division coordinators. School administrators provided 18 additional

major life activities to the ones listed on the survey. The most common of these was attendance (13) followed by diabetes management (4). Division coordinators gave seven additional major life impairments, the most common of which was self-control (8), followed by caring for oneself (5).

The following questions were posed to SAs and DCs about common classes of accommodations for students with 504 plans. Table 27 lists the *other* accommodations reported by SAs.

Table 26

Section 504 School Administrators and Division Coordinators' Responses to Accommodations Queries

Item	Respondent		Respondent	
	n	%	n	%

What types of accommodations have been provided to your Section 504 students? Please provide an estimation of the frequency of use for each accommodation.

Behavior management plans

	School Administrators		Division Coordinators	
Frequently	30	12.93%	7	25.00%
Sometimes	99	42.67%	14	50.00%
Rarely	53	22.84%	3	10.71%
Never	50	21.55%	4	14.29%

Testing accommodations (examples: extended time, having test read to student)

	School Administrators		Division Coordinators	
Frequently	170	65.89%	24	82.76%
Sometimes	72	27.91%	5	17.24%
Rarely	7	2.71%	0	0.00%
Never	9	3.49%	0	0.00%

Table 26 continued

Item	Respondent		Respondent	
	n	%	n	%
<i>Classroom accommodations (examples: second set of textbooks, extra time to get to class)</i>				
	School Administrators		Division Coordinators	
Frequently	183	70.66%	26	89.66%
Sometimes	65	25.10%	3	10.34%
Rarely	7	2.70%	0	0.00%
Never	4	1.54%	0	0.00%
<i>Medical Services</i>				
	School Administrators		Division Coordinators	
Frequently	28	11.81%	2	7.14%
Sometimes	75	31.65%	18	64.29%
Rarely	69	29.11%	6	21.43%
Never	65	27.43%	2	7.14%
<i>Special Transportation</i>				
	School Administrators		Division Coordinators	
Frequently	6	2.56%	1	3.57%
Sometimes	33	14.10%	6	21.43%
Rarely	65	27.78%	8	28.57%
Never	130	55.56%	13	46.43%
<i>Assistive Technology or Adaptive Devices</i>				
	School Administrators		Division Coordinators	
Frequently	11	4.68%	3	10.71%
Sometimes	80	34.04%	12	42.86%
Rarely	65	27.66%	9	32.14%
Never	79	33.62%	4	14.29%
<i>Special Education Services</i>				
	School Administrators		Division Coordinators	
Frequently	13	5.68%	0	0.00%
Sometimes	38	16.59%	6	22.22%
Rarely	30	13.10%	8	29.63%
Never	148	64.63%	13	48.15%

Table 26 continued

Item	Respondent		Respondent	
	n	%	n	%
<i>Related Services</i>				
	School Administrators		Division Coordinators	
Frequently	10	4.83%	3	10.71%
Sometimes	60	28.99%	7	25.00%
Rarely	55	26.57%	9	32.14%
Never	82	39.61%	9	32.14%
<i>Other Accommodations</i>				
	School Administrators		Division Coordinators	
Frequently	2	4.35%	0	0.00%
Sometimes	3	6.52%	0	0.00%
Rarely	3	6.52%	0	0.00%
Never	38	82.61%	8	100.00%

Table 26 makes it clear that the accommodations given most frequently to students on 504 plans are *classroom accommodations* followed by *testing accommodations*. Classroom accommodations were reported as *frequently* used by 70.66% of the SAs and 89.66% of the DCs. School administrators reported that testing accommodations were given *frequently* at 65.89%, while DCs reported the frequent usage at 82.76%. Behavior management plans were reported most often as *sometimes* used by SAs at 42.67% and DCs at 50%. Medical services also were reported most often as *sometimes* used by SAs at 31.65% and DCs at 64.29%. Assistive technology or adaptive devices also fell into the *sometimes* used category at 34.04% for SAs and 42.86% for DCs. Special transportation was reported most often as *never* used at 55.56% for SAs and 46.43% for DCs. Special education services were reported by SAs and DCs most frequently as *never* used (64.63% and 48.15% respectively). School administrators stated

that they *never* used related services as an accommodation most frequently at 39.61%, while DCs were divided equally over whether related services were used *rarely* (32.14%) or *never* (32.14%). Other accommodations were reported as never used by 82.61% of SAs and 100% of DCs. Section 504 Division Coordinators indicated that they *never* provided other accommodations and therefore did not provide responses under the *Accommodations: Other—Please Specify* query. School administrators' responses follow in Table 27.

Table 27

Accommodations Reported Under Other by School Administrators

Respondent	Accommodation
School Administrators	Adjusted/modified schedules
	Aide (2)
	Alternate locations
	Attendance appeals/waivers (2)
	Breaks (sensory, activity, relaxation, bathroom, water, settling) (4)
	Chunking assignments
	Counseling
	Environmental accommodations such as changing heating/AC filters, damp mopping classrooms weekly
	Extra Assistance (2)
	Extra books
	Extra time (6)
	Frequent feedback
	Go home for medicine/rest room needs
	Hearing aids
	Homebound services
	Increased or enhanced parent communication (2)
	Leave class early to transition to next class
	Leave class for treatments
	Limited outside activities during allergy season.
	Medication administered
	Mentoring
	Organizational plans

OT Services
Paper/pencil tests

Table 27 continued

Respondent	Accommodation
	Placement into collaborative classes where two teachers (one special education teacher) can further assist with their needs. Preferential seating (3) Provide study guides and class notes Read aloud (2) Redirection (2) Shortened school day Signed agendas Small group testing Testing via VGLA format Time-out Tutoring

Table 27 showed the 35 other accommodations cited by school administrators, the most common of which is extra time (6), followed by breaks for sensory activities, settling, water, bathroom, relaxation or other activities (4), and preferential seating (3).

Research Question Cluster 4: Recent Claims

Data collection for research question cluster 4 involved collecting the grade levels of students with 504 plans in order to determine whether there was a pattern in provision of 504 plans related to grade level. Additionally, in order to investigate whether there was disproportionality in terms of the ethnicities of students with 504 plans, data on ethnicity of students with 504 plans were compared to the ethnic composition of the general student population and the ethnicity of students who are covered by the Individuals with Disabilities Education Act and have individualized education plans. Hosp and Reschly (2003) have described the computation of rate/risk ratio, which provides the risk of any

ethnic group of student of having a particular educational designator (in this case, a 504 plan) as compared to the risk of any other ethnicity for the same educational designator. Additionally, to determine whether there was a correlation between the wealth of a division or school and the prevalence of 504 plans, data on per pupil expenditure and free and reduced lunch were collected and analyzed against the school and division prevalence of 504 plans.

Table 28

Prevalence of 504 Plans by Grade Level

Grades	School Administrators	Division Coordinators	
7th	299	6th	271
8th	252	7th	252
5th	250	8th	247
6th	220	9th	238
9th	205	10th	211
10th	197	4th	202
4th	180	5th	195
11th	171	3rd	156
12th	157	12th	120
3rd	138	11th	103
2nd	69	2nd	101
1st	49	1st	57
K	13	K	13
Ungraded	2	PK	4
PK	1	Ungraded	0

Table 28 showed that school administrators reported the greatest number of 504 plans at the 7th grade level, with 8th, 5th and 6th following in prevalence. Division coordinators indicated that the greatest number of 504 plans were held by students in the 6th grade, followed by 7th, 8th and 9th.

Rate ratio. Hosp and Reschly (2003) used rate ratios or relative risk indicators in their study of disproportionality in the special education referral and eligibility findings for various student ethnicities. Rate ratios provide a comparison of the risk index for one group to the risk index for another group (Hosp & Reschly, 2003). In the context of studying disproportionality in special education, “risk” means the likelihood of being referred for or being found eligible for special education services. Disproportionality caused by over-identification of Black students under the Individuals with Disabilities Education Act remains a national concern (IDEA, 2004).

For the purpose of this study, rate ratios were calculated from the data provided by school administrators and division coordinators. A rate ratio of 1 means there is no difference between the 2 groups, while a rate ratio of <1 means the event is less likely to occur in the minority group than in the majority group and a rate ratio of >1 means the event is more likely to occur in the minority group than in the majority group. For these analyses, students of ethnic origins other than White comprised the minority groups while the predominant ethnicity (White) comprised the majority group. Rate ratios for students with IEPs also were calculated for comparison purposes. Results are found in Tables 29 and 30.

Table 29

Rate Ratios for 504 Plans and IEPs Calculated from School Administrators' Report

Plan	Ethnicity	Ratio	Plan	Ethnicity	Ratio
Rate Ratio for 504 Plans			Rate Ratio for IEPs		
Black to White Students		1.05	Black to White Students		1.40
Unspecified to White Students		0.29	Hispanic to White Students		0.93
American Indian to White Students		0.29	Unspecified to White Students		0.70
Hispanic to White Students		0.26	American Indian to White Students		0.70

Asian to White Students	0.23	Hawaiian to White Students	0.68
Hawaiian to White Students	0.00	Asian to White Students	0.39

Using the data provided by school administrators, Black students have an approximately 5% higher risk than White students of being given a 504 plan. In terms of being identified under IDEA and being given an IEP, Black students are found eligible at a rate of 1.4 times the rate of White students. In other words, for every 100 White students who have 504 plans, there are 105 Black students with 504 plans and for every 100 White students who have IEPs, there are 140 Black students. In both groups (504 plans and IEPs), student ethnic groups other than Black students are identified for 504 plans or IEPs at rates lower than White students. This would mean that compared to White students, they are less likely to be found eligible for 504 plans or IEPs.

Table 30

Rate Ratios for 504 Plans and IEPs Calculated from Division Coordinators' Report

Plan	Ethnicity	Ratio	Plan	Ethnicity	Ratio
Rate Ratio for 504 Plans			Rate Ratio for IEPs		
Unspecified to White Students		0.83	Black to White Students		1.08
Black to White Students		0.67	American Indian to White Students		1.07
Asian to White Students		0.27	Unspecified to White Students		0.84
Hispanic to White Students		0.25	Hispanic to White Students		0.81
Hawaiian to White Students		0.00	Hawaiian to White Students		0.45
American Indian to White Students		0.00	Asian to White Students		0.35

Analysis of division coordinators' data provides a different depiction of rate ratios. In terms of 504 plans, no ethnic group is more likely than White students to be given 504 plans. For Black students this would mean that for every 83 Black students

who have 504 plans, there are 100 White students. According to division coordinators, Black students are 8% and American Indian students are 7% more likely to have IEPs than White students.

Correlation. Correlational analyses were done with data reported by school administrators and division coordinators. School wealth, in terms of per pupil expenditures and free and reduced lunch eligibility were compared the prevalence of 504 plans in the schools and divisions. For the data provided by school administrators, free and reduced lunch percent showed a negative correlation with the number of school 504 plans ($R = -0.110$ with $p\text{-value} = 0.049$, significant at the 0.05 level). This relationship was weak but significant and means that the lower the free and reduced lunch eligibility, the higher the incidence of 504 plans. The correlation between per pupil expenditures and the number of school 504 plans was 0.001 with $p\text{-value} = 0.987$. This suggests that there is no linear relationship between the two variables.

In the data provided by division coordinators, there were no significant correlations between school wealth and 504 plans. The correlation between free and reduced lunch and the number of division 504 plans was 0.038 with $p\text{-value} = 0.841$, while the correlation between per pupil expenditures and the number of division 504 plans was -0.085 with $p\text{-value} = 0.656$.

Research Question Cluster 5: Litigation

This question attempted to add to the Section 504 case law presented previously. The purpose of the additional case law review was to find points of confusion in the law at judicial levels high enough to be influential, not to construct a legal history of Section 504 decisions. Therefore, the resulting search yielded a sample of Section 504 decisions.

The researcher used the Westlaw database to search for all federal cases involving *Section 504, discrimination, non-discrimination and elementary or secondary education*. No date parameters were specified. Using these search parameters, 24 cases were located. Sixteen of these cases had additional decisions beyond the federal venue or date of the decision. Then, using a quasi grounded theory approach, researcher examined the decisions for judicial opinions about Section 504 as related to the research questions, in particular, those issues in which overlapping statutes (e.g., The Individuals with Disabilities Education Act (IDEA), The Americans with Disabilities Act (ADA)) might have created additional deliberations. The resulting excerpts are presented in Table 31.

Table 31

Case Law Excerpts

Case	Date	Issue	Guidance on Section 504
<i>Larry P. v. Riles</i>	October 16, 1979	Black students brought action challenging process, especially use of I.Q. tests, used in placing children in special classes for the educable mentally retarded.	Regarding mainstreaming: "...virtually identical regulations under the two statutes [IDEA & Section 504] describe allowable practices for decision on proper classroom placement and curriculum design" (p. 42). ^a
<i>Tatro v. State of Texas</i>	September 2, 1980	Parents of child with spina bifida brought action against school district for alleged violation of federal law arising from failure to include clean instrument catheterization in the child's individual education plan.	Regarding the reasonable accommodation standard: "Thus, like Camenisch, this case is distinguishable from Southeastern Community College because, with the provision of CIC, Amber will be able to perform well in school and thus realize the principal benefits of the school district's program" (p. 10). ^b

Table 31 continued

Case	Date	Issue	Guidance on Section 504
<i>Anderson v. Banks</i>	June 17, 1981	Actions challenging institution by county school district of exit examination.	Regarding 504 eligibility criteria to be used by schools: "Handicapped person" as 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." Section 84.3(2)(iii) makes clear that one who is misclassified as having such a mental impairment is covered by the statute and regulations. The regulations promulgated under Section 504 set out the criteria which are to be used in evaluating a student for special placement" (p. 36). ^c
<i>Garrity v. Gallen</i>	August 17, 1981	Class action was brought by residents of New Hampshire school for mentally retarded seeking ruling that their right to habilitation required that they be placed in least restrictive alternative, i. e., community placement.	Regarding Section 504 and provision of an individualized program: "For the purposes of the facts in this case, the provisions of Part D, s 504 of the Rehabilitation Act of 1973, are substantially the same as those of the EHCA [IDEA], with the exception that s 504 does not address the requirement of individual education plans (IEP's), presumably because requiring IEP's goes beyond the discrimination context of the law"(p. 46). ^d

Table 31 continued

Case	Date	Issue	Guidance on Section 504
<i>Patsel v. District of Columbia Bd. of Ed.</i>	September 15, 1981	Learning-disabled child and parents sought order to compel Board of Education to hold due process hearing for purpose of determining whether defendants' proposed placement of child in special education program was appropriate to meet child's unique educational needs.	Regarding procedural safeguards requirements of Section 504: "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 procedure safeguards of section 615 of the Education of the Handicapped Act [IDEA] is one means of meeting this requirement" (p. 4). ^e
<i>Davis v. District of Columbia Bd. of Ed.</i>	September 23, 1981	Handicapped student and her parents brought action against Board of Education alleging that it failed to afford student a free and appropriate public education and other issues.	Regarding the free appropriate public education standard: "Plaintiffs' second claim is under Section 504 of the Rehabilitation Act of 1973 and the federal regulations promulgated thereunder, which incorporate many of the same procedural and substantive rights as are found in the EHA [IDEA]. Plaintiffs contend that defendants' obligation to provide appropriate placement under this Act is inescapable. The regulations state: 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" (p. 5). ^f

Table 31 continued

Case	Date	Issue	Guidance on Section 504
<i>Yaris v. Special School Dist. of St. Louis County</i>	March 2, 1983	Class action was brought seeking, inter alia, declaratory and injunctive relief against continued application of defendants' policy, which precluded the provision of educational programs for handicapped children in excess of the traditional nine-month school year.	Regarding discrimination and Section 504: "...state of Missouri violated Rehabilitation Act by distributing federal funds to local districts for purpose of educating nonhandicapped children during the summer months without providing comparable services to the severely handicapped; furthermore, to extent that state's policy precluded consideration of the individual needs of all handicapped children and provided services to the nonhandicapped, the state was in violation of the Rehabilitation Act and its regulations" (p. 2). ^g
<i>St. Louis Developmental Disabilities Treatment Center Parents Ass'n v. Mallory</i>	August 8, 1984	Action was brought challenging Missouri's placement of severely handicapped children in separate schools.	Regarding compliance with IDEA: "When a Rehabilitation Act claim is based on some facet of the Education of All Handicapped Children Act [IDEA], compliance with requirements of the Education of All Handicapped Children Act also established compliance with the Rehabilitation Act" (p. 2). ^h
<i>Georgia State Conference of Branches of NAACP v. State of Ga.</i>	October 29, 1985	Black schoolchildren brought civil rights class action, claiming that black students were assigned to regular classes and special education programs in certain school districts in a discriminatory manner.	Regarding violations of Section 504: "Some courts have held that a plaintiff must prove bad faith or the intent to discriminate on the basis of handicap in order to recover damages under Section 504. This circuit recently deferred the question, describing the issue of the remedies available under Section 504 as "murky" (p. 24). ⁱ
<i>Hendricks v. Gilhool</i>	March 23, 1989	Class action was brought seeking declaratory and injunctive relief under Rehabilitation Act and the Education of the Handicapped Act.	Regarding the free appropriate public education standard of Section 504: Failure of Pennsylvania Department of Education to open classes necessary for appropriate special education of handicapped students in intermediate unit ran afoul of Commonwealth's duty under Education of Handicapped Act and implementing regulations of Rehabilitation Act to assure that handicapped children receive "a free and appropriate education" (p. 2). ^j

Table 31 continued

Case	Date	Issue	Guidance on Section 504
<i>Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.</i>	August 17, 1992	The parents of a child with Down's Syndrome [sic] sued school board, challenging board's decision to place child in separate special education program outside of district.	Regarding the reasonable accommodation standard: "The School District's refusal to investigate and consider the modifications necessary to accommodate Rafael preclude it from rebutting plaintiffs' evidence that such accommodation would neither change the essential nature of the program nor place an undue burden upon the School District"(p.17). ^k
<i>Urban by Urban v. Jefferson County School Dist.</i>	December 3, 1994	Parents of disabled child brought action challenging school district's refusal to place child in neighborhood high school.	Regarding the discrimination under Section 504: "The Plaintiff relies heavily on the decision of the Tenth Circuit in <i>New Mexico Ass'n for Retarded Citizens v. New Mexico</i> . That decision is readily distinguishable from the issue in the present case for several reasons set forth [in the case]. Even if this Court found that decision to be applicable here, it is clear that under that decision, § 504 and its regulations were designed to prohibit discrimination rather than to require affirmative action" (p. 9). ^l
<i>Hudson By and Through Hudson v. Bloomfield Hills Public Schools</i>	November 30, 1995	Parent of 14-year-old developmentally disabled student certified as trainable mentally impaired brought an action pursuant to federal law challenging individualized education planning committee's placement of student.	Regarding exhaustion of other remedies before pursuing a Section 504 claim: "As Defendant points out, special education litigants are not entitled to relief under Section 504 unless they first initiate and exhaust all available administrative remedies [under] IDEA" (p. 19). ^m
<i>McGraw v. Board of Educ. of Montgomery County</i>	January 23, 1997	Mother of student, now in his early 20s, who suffered from pervasive developmental disorder, mild mental retardation, and substance abuse problem sued board of education and local school officials alleging violations of federal law	Regarding standards for services provided under Section 504: "Plaintiffs provide no evidence that Defendants intentionally discriminated against them, or denied them services, because of Sean's disability. Indeed, Defendants provided Plaintiffs with a broad range of educational and vocational services from Sean's entering elementary school through his receipt of a high-school certificate at age twenty-one, as is explicated in the Affidavit of David Cross and the Administrative Record" (p. 8). ⁿ

Table 31 continued

Case	Date	Issue	Guidance on Section 504
<i>DeBord v. Board of Educ. of Ferguson-Florissant School Dist.</i>	October 9, 1997	Parents of student with attention deficit hyperactivity disorder (ADHD) brought action against school district and individual defendants, alleging that district's refusal to administer prescription drug to student violated federal law.	Regarding Section 504 standards for discrimination: "School district's refusal to administer prescription drug to student with attention deficit hyperactivity disorder (ADHD), pursuant to policy by which district refused to administer prescriptions exceeding that recommended by physicians' desk reference publication, did not violate Rehabilitation Act or Americans with Disabilities Act (ADA), as policy was neutral, since it applied to all students regardless of disability, and there was no evidence that policy had disparate effect on disabled students" (p. 1). ^o
<i>Jensen v. Reeves</i>	March 29, 1999	Parents of elementary school student, who had been suspended for misconduct, brought action against school officials.	Regarding eligibility requirements for students under Section 504: "Suspension of elementary school student for misconduct did not violate Rehabilitation Act, despite claim student suffered from attention deficit disorder, where school had provided parents with opportunity to have student evaluated to determine if he qualified for special education placement but parents had never requested or consented to such placement" (p. 4). ^p
<i>Doe v. Eagle-Union Community School Corp.</i>	March 30, 2000	High school student and parents sued state and school, alleging violations federal law.	Regarding discrimination due to disability under Section 504: "Decision to not place learning-disabled student on high school's basketball team was not violation of Rehabilitation Act, absent evidence that coach, who made decision, was aware of student's disability, or that there was any causal connection between disability and failure to select student for team" (p. 2). ^q

Table 31 continued

Case	Date	Issue	Guidance on Section 504
<i>Birmingham v. Omaha School Dist</i>	May 10, 2000	Disabled student sued school district and district and state officials and employees, alleging that by graduating student early without prior written notice to her parent, the defendants violated federal law.	Regarding standards for violation of Section 504: “Where alleged ADA and Rehabilitation Act violations are based on educational services for disabled children, the plaintiff must prove that school officials acted in bad faith or with gross misjudgment” (p. 1). ^f
<i>Zayas v. Commonwealth of Puerto Rico</i>	July 19, 2005	Parents of disabled student and student sued Department of Education under federal law.	Regarding standards for violation of Section 504: “Parents’ failure to present evidence of deliberate indifference or bad faith by the Department of Education in refusing to place student in private school precluded parents’ claims under the Rehabilitation Act; instead, a genuine disagreement existed between the parties as to what constituted an appropriate education for student and which were student’s unique needs” (p. 9). ^g
<i>Mershon v. St. Louis University</i>	April 5, 2006	Student filed suit against university and its trustees under federal law, alleging failure to accommodate and retaliation.	Regarding the reasonable accommodation standard: “To show failure to accommodate in violation of ADA or Rehabilitation Act, plaintiff bears initial burden of demonstrating that he requested reasonable accommodation, and that those accommodations would render him otherwise qualified” (p. 3). ^h
<i>P.P. ex rel. Michael P. v. West Chester Area School Dist</i>	May 29, 2008	Minor child with learning disabilities and his parents initiated case against school district based on claims arising under federal law.	Regarding Child Find requirements in Section 504: “All Plaintiffs’ Child Find claims are based on IDEA and Section 504 and, therefore, the same statutes of limitations apply” (p. 17). ⁱ
<i>M.K. ex rel. Mrs. K. v. Sergi</i>	June 6, 2008	Parent accused Connecticut DOE officials of violated the cited laws.	Regarding exhaustion of other remedies before pursuing a Section 504 claim: “If plaintiff is seeking relief that is also available under the IDEA, plaintiff still must exhaust administrative remedies under the IDEA, regardless of whether action is brought under IDEA, ADA, Rehabilitation Act, or § 1983” (p. 3). ^v

Table 31 continued

Case	Date	Issue	Guidance on Section 504
<i>Centennial School Dist. v. Phil L. ex rel. Matthew L</i>	June 17, 2008	School district filed state court action challenging hearing officer's finding that student was eligible for service agreement under Rehabilitation Act. Student's parents filed counterclaim seeking declaration that school district violated student's due process rights under Rehabilitation Act by expelling him without convening manifestation hearing.	Regarding procedural safeguards under Section 504: "...Rehabilitation Act's requirement that public schools provide procedural safeguards to students receiving special services did not mandate that school district provide student diagnosed with attention deficit hyperactivity disorder (ADHD) a pre-expulsion manifestation hearing under IDEA" (p. 1). ^w

^a*Larry P. v. Riles*, 1979; ^b*Tatro v. State of Texas*, 1980; ^c*Anderson v. Banks*, 1981; ^d*Garrity v. Gallen*, 1981; ^e*Patsel v. District of Columbia Bd. of Ed.*, 1981; ^f*Davis v. District of Columbia Bd. of Ed.*, 1981; ^g*Yaris v. Special School Dist. of St. Louis County*, 1983; ^h*St. Louis Developmental Disabilities Treatment Center Parents Ass'n v. Mallory*, 1984; ⁱ*Georgia State Conference of Branches of NAACP v. State of Ga.*, 1985; ^j*Hendricks v. Gilhool*, 1989; ^k*Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, 1992; ^l*Urban by Urban v. Jefferson County School Dist.*, 1994; ^m*Hudson By and Through Hudson v. Bloomfield Hills Public Schools*, 1995; ⁿ*McGraw v. Board of Educ. of Montgomery County*, 1997; ^o*DeBord v. Board of Educ. of Ferguson-Florissant School Dist.*, 1997; ^p*Jensen v. Reeves*, 1999; ^q*Doe v. Eagle-Union Community School Corp.*, 2000; ^r*Birmingham v. Omaha School Dist.*, 2000; ^s*Zayas v. Commonwealth of Puerto Rico*, 2005; ^t*Mershon v. St. Louis University*, 2006; ^u*P.P. ex rel. Michael P. v. West Chester Area School Dist.*, 2008; ^v*M.K. ex rel. Mrs. K. v. Sergi*, 2008; ^w*Centennial School Dist. v. Phil L. ex rel. Matthew L.*, 2008.

Table 31 provided case law excerpts from a review of some of the federal judicial decisions that invoked Section 504. In five of the decisions regarding issues common to the Individuals with Disabilities Education Act (IDEA) and Section 504, specifically mainstreaming (*Larry P. v. Riles*, 1979); Child Find (*P.P. ex relative Michael P. v. West Chester Area School District*, 2008); free appropriate public education (*Davis v. District of Columbia Board of Education*, 1981; *Hendricks v. Gilhool*, 1989) and eligibility (*Jensen v. Reeves*, 1999), judges grounded their decisions about Section 504 in the provisions of IDEA, often citing the language shared by IDEA and Section 504. These

IDEA-compatible decisions were reinforced in *St. Louis Developmental Disabilities Treatment Center Parents' Association v. Mallory* (1984) when the court aligned the two statutes by stating that establishing compliance with one law also established compliance with the other. Two decisions (*Hudson by and through Hudson v. Bloomfield Hills Public Schools*, 1995; *M.K. ex relative Mrs. K. v. Sergi*, 2008) affirmed the requirement that in order to bring a claim under Section 504, claimant must first exhaust all administrative remedies under IDEA. The decision in *Patsel v. District of Columbia Board of Education* (1981) provided a more equivocal view of the compatibility of the two laws, reminding the reader that Section 504 regulations state that compliance with IDEA is “one way” of meeting the procedural safeguards requirements.

Relying on compliance with IDEA to meet Section 504 requirements did not prove fruitful in two other cases. In *Centennial School District v. Phil L. ex relative Matthew L.* (2008), the decision states that the procedural safeguards of Section 504 do not require the school district to provide a manifestation determination hearing under IDEA despite similar language. *Garrity v. Gallen* (1981) also made a firm separation between the two laws, citing the similar provisions but noting that the lack of an individualized education plan requirement in Section 504 was likely due to the “discrimination context of the law” (p. 46).

Cases regarding *discrimination* under Section 504 tended to fall into one of two patterns. Either the courts investigated the claim of discrimination using a comparative standard (*DeBord v. Board of Education of Ferguson-Florissant School District*, 1997; *Doe v. Eagle-Union Community School Corporation*, 2000; *Yaris v. Special School District of St. Louis County*, 1983) or they cited the futility of doing so (*Birmingham v.*

Omaha School District, 2000). *Birmingham v. Omaha School District* (2000) comfortably invoked the stand that school officials would have to be shown to have acted in “bad faith or with gross misjudgment” (p. 1), while the decision in *Georgia State Conference of Branches of NAACP v. State of Georgia* (1985) acknowledged the “bad faith” standard but termed the issue of recovering damages under such claims “murky” (p. 24). In *Zayas v. Commonwealth of Puerto Rico* (2005) the parents lost their case because they failed to present evidence of “deliberate indifference or bad faith” on the part of Puerto Rico’s Department of Education (p. 9).

Involvement in educational decisions like *school placement* under Section 504 was rejected in *Urban by Urban v. Jefferson County School District* (1994) as the court noted that Section 504 was designed to “prohibit discrimination rather than to require affirmative action” (p. 9). Similarly, in *McGraw v. Board of Education of Montgomery County*, the court refused to investigate the efficacy of a range of services that had been provided to a student, but rather was content that the evidence showed that services had been given.

Other courts were willing to undertake the task of interpreting Section 504 in educational decisions, however. *Tatro v. State of Texas* (1980); *Oberti by Oberti v. Borough of Clementon School District* (1992); and *Mershon v. St. Louis University* (2006) reviewed the “*reasonable accommodation*” standard of the law, citing the contingent benefits of an accommodation (*Tatro*); a school division’s refusal to consider accommodations (*Oberti*) and a student’s request for an accommodation (*Mershon*). Addressing eligibility under Section 504, the decision in *Anderson v. Banks* (1981) regarding Black students misclassified as mentally retarded extends the eligibility

requirement most commonly used in schools (i.e., having a “physical or mental impairment which substantially limits one or more major life activities”) to the third tier (i.e., “regarded as having such an impairment”), which runs counter to implementation of Section 504 in education settings.

Threats to the Study

Internal Threats

The greatest threat to the internal validity in this study was the non-random selection of the population. The entire population was surveyed rather than using a sampling frame of any description. Non-random selection provides no control for the occurrence of certain demographic variables as is found in stratified random sampling and therefore results in a less representative sample. An additional threat may lie in the historical effect of the reauthorization of the Americans with Disabilities Act (ADAAA) a month before the study began. Changes to the ADA caused changes to Section 504, which resulted in additional training for division coordinators and notification to school administrators. The additional attention, training and notification about Section 504 may have impacted the respondents’ answers to the questions.

Further, much of the data was self-reported by school administrators and division coordinators who may not have accurately recounted the data. Finally, an additional threat may have been the apprehension associated with responding to a survey about a part of their jobs that concerns compliance with a federal mandate despite the researcher’s assurances of confidentiality.

External Threats

The degree to which this study can be generalized is the primary external threat of this study. While the respondents to the study may be similar to the greater population of Section 504 school administrators and division coordinators in Virginia, they may be more or less similar in their procedural knowledge and reporting capabilities than school administrators or division coordinators in other states. Nonresponse error also presents an external threat to validity and was addressed in Chapter 3. However, the use of archival data where possible increased the generalizability of the results due to the fidelity of large scale data collection. Additionally, the population of this study may be more knowledgeable than other populations studied. When compared to other similar research in which the respondents were principals (Holler, 2006) or special education directors (Seese, 2003), this study targeted two groups: the Section 504 personnel in each school and division, which may increase the generalizability of the results.

Chapter Summary

Chapter four provided the data and analyses used in this study. In answer to *research question cluster 1: roles and guidelines*, Section 504 school administrators and division coordinators' additional roles and the results of the procedural knowledge section of their surveys were presented. *Research question cluster 2: training* was investigated using items from the school administrators and division coordinators surveys, due process hearing decisions and Office for Civil Rights complaint resolution letters. *Research question cluster 3: data* was addressed with the Section 504 data that school administrators and division coordinators presented in their surveys. *Research question cluster 4: recent claims* was examined through analyses of the grade levels of students with 504 plans, the rate ratios of the ethnicity of students with 504 plans and the

correlations between per pupil expenditures, free and reduced lunch eligibility and students with 504 plans. Finally, the researcher presented a brief review of case law to explore *research question cluster 5: litigation*.

CHAPTER V

Summary, Conclusions, Implications, and Recommendations

Introduction

By all accounts, Section 504 is a poorly understood mandate that may hold unrealized potential. The intent of this study was to construct a profile of the Commonwealth of Virginia's use and understanding of Section 504 of the Rehabilitation Act of 1973. A profile was created using data from a survey of Section 504 school administrators and division coordinators, archival data from the Virginia Department of Education (VDOE), VDOE hearing officers' decisions, Office for Civil Rights complaint resolution letters and federal level judicial decisions. The results of the data collection were presented in Chapter 4.

Chapter Overview

This chapter is comprised of a summary of findings, conclusions of the study, implications for educational practice, and recommendations for future research. The summary of findings presents a profile of Section 504 knowledge and use in Virginia by answering each research question. The summary also contains comparisons of Virginia's current status to the findings of other Section 504 studies. In the conclusions of the study, the profile of Virginia's Section 504 knowledge and use will be applied to the hypothetical case of a Virginia student with impairments. Implications will be discussed in light of the results and recommendations for further study will include additional directions for Section 504 research.

Summary of Findings

Research Question Cluster 1: Roles and Guidelines

Who is responsible for Section 504 implementation and oversight in Virginia schools and divisions and what other roles do these people fill? Virginia's Section 504 school administrators and division coordinators had a number of other roles, many of them likely to be more time consuming than overseeing the implementation of Section 504. While prevalence figures make it unlikely that a school division would dedicate a position and funds solely to Section 504 oversight, there is a concern that the task may not be effectively executed. Given the lack of attached funding and confusion about implementation, these multitasking individuals may assign Section 504 a low priority. The prevalence of special education roles among the division coordinators also is troubling as it shifts the focus of and the responsibility for Section 504 away from general education. The Council of Administrators of Special Education (CASE) (2006) asserted that the ultimate responsibility for implementation rests with the "general education system" (p. 4). The findings of multiple roles in this study echo previous research. Madaus and Shaw (2008) and Seese (2003) found that a variety of administrators filled the role of school-level Section 504 administrator. Katsiyannis and Conderman (1994) posited that some confusion among school personnel may be the result of poorly defined roles and responsibility at the school level.

How well do Virginia Section 504 school administrators and Section 504 division coordinators understand Section 504? There are several important points of confusion about Section 504 among Virginia Section 504 school administrators and division coordinators: (a) awareness of division Section 504 policies and procedures; (b) use of

the correct comparative framework for substantial limitation; (c) incorrect consideration of mitigating measures; (d) evaluation of students who have been found ineligible for IDEA; and (e) application of the reasonable accommodation standard.

For division coordinators and school administrators, an important aspect to implementing Section 504 is knowing the division's framework for implementing the law. Bonnie English, Monitoring Specialist for Special Education and Civil Rights Laws at the VDOE has confirmed that school divisions were to develop their own policies and procedures to comply with the law (personal communication, November 12, 2008). As such, it is reassuring that the majority of division coordinators and school administrators verified that a school board policy, written grievance and hearing procedures, and specific forms for eligibility, evaluations and 504 plans were in place. Most school administrators confirmed that the division had a Section 504 division coordinator. However, concerns about weaknesses in Virginia Section 504 procedure rest with the minority: those administrators who reported that a school board policy did not exist or did not know of one and the division coordinators who reported that no policy was in place. Similarly, Section 504 requires procedural safeguards in the form of grievance and hearing procedures. Written evidence of such procedures was either not in place or unknown to some of the SAs and the DCs. Despite the fact that the VDOE requires the appointment of such a person, some SAs were unaware of the availability of a Section 504 division coordinator or reported that one did not exist (see Table 9). Seese's (2003) study of Section 504 implementation in Connecticut may hold a warning for Virginia's divisions: respondent special education directors reported similar response percentages to questions about basic Section 504 policy and procedure. In Connecticut, however, 31 of

134 divisions reported four to eleven OCR complaints for each of their divisions (Seese, 2003). Seese's study also revealed that 47% of the responding special education directors indicated that an attorney had not reviewed the district's Section 504 procedures. In Virginia, over half of the division coordinators stated that no such review had taken place. School divisions might want to consider such a safeguard. Should Virginia parents adopt a more adversarial attitude regarding Section 504 rights for their children, these schools may find themselves unprepared.

Confusion also exists about the substantial limitation standard for eligibility. School divisions have been advised to use the comparability standard found in the Americans with Disabilities Act (CASE, 2006). Based on these guidelines, when examining the extent of a student's impairment to ascertain whether a substantial limitation exists, the student's educational performance is to be compared to an *average student in the general population*, not to the student himself (CASE, 2006; Clark, 2008; Heyward, 1992; Smith, 2002). When Virginia's school administrators were asked which comparative frame of reference they would use, nearly 60% responded that they would compare the student's *potential* educational performance to his/her current performance or did not know (see Table 8). School divisions are not obligated to provide services that would maximize a student's potential (Mehfoud & Andriano, 2005). These data may indicate a trend toward inaccurate identification or possible stalemates at the eligibility table since a student's potential is difficult to define. Meanwhile, eligible students may be denied coverage.

Despite the recent attention drawn to mitigating measures by the reauthorization of the Americans with Disabilities Act and the subsequent training for division

coordinators by the Virginia Department of Education, many school administrators and division coordinators were unsure whether to consider mitigation measures in eligibility decisions. Nearly 80% of school administrators and 57% of division coordinators chose the incorrect response (*with mitigating measures*) or did not know. This finding suggests that Virginia Section 504 personnel may be less adequately informed than the national sample of principals surveyed by Holler and Zirkel (2008). These researchers found that only 54.3% of the principals who responded to their national survey understood that mitigating measures had to be taken into account when determining eligibility for Section 504 at that time. For Virginia Section 504 personnel, knowing whether or not a student with ADHD is to be considered for eligibility while he is on or off his medication has a strong impact on the proper implementation of the law.

No other studies have investigated the process of secondary evaluation for students who have been found ineligible under the Individuals with Disabilities Education Act (IDEA). This point of referral provides an opportunity to explore all available supports for the student, including the possibility of a 504 plan. The Council of Administrators of Special Education CASE (2006) has proposed that the following conditions should occasion a Section 504 referral: “a student is referred for evaluation for IDEA, but the IEP teams decides there is no reason to suspect a disability under IDEA” and “a student is evaluated and not eligible under IDEA” (p. 9). The majority of DCs (88.46%) responded that school teams had been advised to consider a student for Section 504 eligibility after finding the student ineligible for IDEA services. However, most school administrators reported that this was *sometimes* done. From these data, it is difficult to determine why a secondary evaluation is not routinely done, but the part of the

answer may relate to another misconception among school administrators concerning the difference between eligibility for IDEA and Section 504. Despite reassurances from a variety of sources (Madaus & Shaw, 2008; OCR FAQ, 2009; VDH, 1999; VDOE, n.d.) that there are students eligible for Section 504 coverage who are not eligible under IDEA, several school administrators echoed the following statement regarding the purpose of Section 504 as compared to IDEA, “None. Students who do not qualify under IDEA do not qualify under 504.” Missing a chance to accord a struggling students rights and services or precluding a student’s right to be evaluated under Section 504 is inadequate compliance with the law’s identification and notification procedures.

The qualification of “reasonable” acts to limit the scope of the accommodations that might be provided to students on Section 504 plans. Professionals have upheld the reasonable accommodation standard in practitioner literature (Heyward, 1992; LaMorte, 2008; Latham, Latham, & Mandalawitz, 2008; Yell, 2006). Yet OCR has stated that the writers of Section 504 intended a different standard for elementary and secondary schools than was used for post-secondary or employment settings and that such a limitation did not exist in that context (OCR,1993). In any case, the majority of Virginia school administrators and division coordinators will limit students’ accommodations to those that don’t pose an “undue hardship on the operation of a program or school”. This leaves the determination of possible accommodations to a 504 team’s judgment of what undue hardship means in the context of their schools. The results of this survey indicate that this perception may be limiting Virginia 504 students’ access to special transportation, special education services and related services. Behavior management plans, medical services, and assistive technology/adaptive devices, despite their utility, are infrequently

available to Virginia's 504 students. All of the foregoing accommodations involve either additional cost or additional expertise beyond what is normally available in a general education classroom. As such, Section 504 eligibility teams may be using a financially based standard to define undue hardship.

Research Question Cluster 2: Training

What is the state of training in Virginia schools on the implementation of Section 504? To whom is training directed and how often is it provided? Virginia school divisions are providing training on a reasonably frequent basis. Most school administrators (62.7%) and division coordinators (61.54%) responded that training had been given during the *current academic year* or *last academic year*. This finding is similar to that found by Seese (2003) in her study of implementation in Connecticut. However, Madaus and Shaw (2008) found that only 37% of the school professionals they surveyed in a northeastern state had received training in the *current year* or *last year*.

School administrators reported that the training most often was directed to special educators, which is not optimal as they would be encountering eligible students much less frequently than general educators. The involvement of special educators and special education directors (most frequent primary role for Section 504 division coordinators) runs contrary to the intent of the law (CASE, 2006). However, school administrators and division coordinators noted that training frequently was provided to guidance counselors, again not a desirable choice unless the guidance counselors were acting as the school's administrator for Section 504. General educators, the group most likely to have contact with eligible students and to be required to implement 504 plans were selected by SAs and DCs as the third most frequently trained group. In her investigation of numerous

OCR complaints in Connecticut, Seese (2003) surveyed 115 special education directors about compliance procedures and reported that 61.7% responded that yearly training was provided for the special education staff while 48.7% noted that yearly training was provided to the general education staff. In Virginia, refocusing the training to target general educators might have the effect of better compliance with the law as well as better serving students with impairments.

Do due process hearings reflect misunderstanding? Virginia due process hearing decisions indicate an inconsistent outcome for Virginia parents hoping to use the due process system to ensure Section 504 rights. The most prevalent issues to require due process under Section 504 were eligibility and discrimination concerns, which may reflect the divisions' ability to apply Section 504. However, in a period of 7 years, there were only 11 issues that involved Section 504, and only one that involved a Section 504-only student. An examination of the due process decisions provided insight on the understanding of Virginia's due process hearing officers. The substantial limitation standard was variably applied in four decisions. In one case, despite the likely presence of "some disorder" that caused reading difficulties, the student's average success caused him to be ineligible (VDOE, HOD 04-114, July 12, 2004). Conversely, after being found ineligible for coverage under IDEA and despite the student's average educational performance, another student was found eligible for a 504 plan in what may have been a "consolation prize" judgment as described by Zirkel (as cited in Holler & Zirkel, 2008, p. 31). In another, the hearing officer essentially discarded school division testimony and assessment in favor of a doctor's diagnosis and the fact that the eligibility had considered mitigating measures as was the law at the time of the case (VDOE, July 26, 2004, HOD 04-

096). Regarding the use of medical diagnoses to prove eligibility, OCR has stated that a medical diagnosis alone is not sufficient documentation (OCR FAQ, 2009). Pursuing a claim of discrimination under Section 504 through due process in Virginia may prove unpredictable as the hearing officers tended to either investigate the claim using a comparable standard or to invoke the difficult-to-prove “bad faith and gross misjudgment” standard. The school division that delayed in developing an IEP for an eight year old student for 18 months through a series of missteps did not act in bad faith or gross misjudgment according to hearing officers (VDOE, n.d., HOD 02-108) As such, Virginia’s due process hearings decisions provided little guidance on the issues that were unclear to school administrators and division coordinators.

Do OCR complaints reflect misunderstanding? While the penalties for non-compliance with Section 504 are strong, the loss of federal funding for such infractions seems to be unlikely in Virginia based on a review of recent complaints. Rather than looking at the outcome of a division’s procedures, such as eligibility, accommodations, alerting the staff or convening a MDH/R, the investigation typically is limited to whether the division *has* a procedure. Virginia parents complained to the Office for Civil Rights most frequently about school divisions’ failures to implement accommodations (8); to inform the staff of the student’s 504 plan (4); and to convene a manifest determination hearing/review (MDH/R) after repeated suspensions (2). OCR enforces the broadest possible interpretation of the law. Accordingly, many of the parents’ claims could not be substantiated upon OCR investigation. While it is true that the complaints were investigated very thoroughly, using extensive interviews and review of documents, the end goal was to ascertain that the division had met the very broad letter of the law. In

some of these cases, OCR did not find fault with the division but provided guidance in the form of “suggestions” or “concerns.” The statements to Virginia school divisions were reminders to monitor a student’s behavior for possible re-evaluation; to better organize their procedures and documentation; to better inform summer school teachers of 504 plans; to revise a form to include a place to indicate 504 coverage and to be more proactive in evaluating likely students.

The Office for Civil Rights found fault with Virginia school divisions in three instances. OCR has stated that its initial enforcement action is to seek “voluntary compliance through negotiation of a corrective action agreement” (OCR FAQ, 2009). OCR specified a particular course of action in only one case: the case of the student with the life-threatening peanut/tree nut allergy in which “extraordinary circumstances” were cited. In signing the voluntary agreement, the division agreed to return to eligibility proceedings, ostensibly to find the student eligible. Compared to the findings of Seese (2003) in her study of 504 compliance procedures in Connecticut in which 31 of her division coordinators reported having four to eleven OCR complaints, Virginia’s involvement with OCR seems mild. However, a cogent assessment of the complaints lodged by parents might provide valuable training data for school divisions and spare the expenditure of valuable time, resources and relationships.

Research Question Cluster 3: Data

How many students in Virginia have 504 plans? School administrators reported that 2224 (1.17%) students had 504 plans in their schools and division coordinators reported that 2194 (1.25%) students had 504 plans in their divisions. Holler (2006) surveyed 549 public school principals to compile data on Section 504. Her study found

the national percentage to be approximately 1.2%, which is similar to the findings in this study. Seese (2003) found the prevalence of students on 504 plans to be in 1.73% in Connecticut. In comparison, Virginia currently serves 167,930 students under IDEA, which is 13.59% of the student population. In Connecticut, the percentage of students served under IDEA is 12.3% (Seese, 2003). Applying the mean percentage of students with 504 plans in this study (1.21%) to Virginia's total population of students would yield an estimate of 14,947 Virginia students with 504 plans.

What are the ethnicities and genders of Section 504 students in Virginia?

Approximately 64% of Virginia's students with 504 plans were male. White students had the majority of 504 plans and Black students had the next highest percentage. There has been little research on ethnicity and Section 504 plans. Seese (2003) has proposed that better knowledge of Section 504 might assist schools struggling with claims of disproportional representation of minority students, but did not include it in her research. Disproportional representation will be discussed in a following section.

What impairments and major life activities are served for Section 504 students in Virginia?

Impairments. ADHD was clearly the most common impairment served at approximately 62% of the reported impairments. School administrators reported learning disabilities as the second most prevalent, while for division coordinators, diabetes was second (see Tables 20 & 21). Holler (2006) found higher percentages of plans for students with ADHD at 80% and students with diabetes at 24.1%. In this study, approximately 4% of the respondents choose the *other* category to indicate impairments. School administrators supplied 83 additional impairments under the *other* category and

division coordinators supplied 58. Virginia Section 504 personnel seem to have adopted a broad interpretation of the impairment criteria with over 170 covered impairments reported. Madaus and Shaw (2008) found that the 259 school professionals in their survey provided impairments that were not covered by Section 504 under the *other* category (e.g., slow processors, ESL students). In this study, there were some impairments entered under *other* that were evocative of services rather than impairments (e.g., speech language and occupational/physical therapy), which would indicate some confusion over the meaning of impairment in this context.

One misconception seems evident among Virginia school administrators: that Section 504 exists to serve students with medical impairments and that a diagnosis is required for services. Nearly 11% of school administrators made comments like the following:

- “504 is for students who may have a medical reason for academic and school accommodations [sic] as well as a medical issue that impacts learning”
- “A student must have a medical diagnosis to receive 504 services.”
- “Students with a medical diagnosis are considered for a 504 Plan for a variety of services and accommodations [sic], i.e [sic] transportation, related services, SOL accommodations [sic], including VGLAA [sic]. SPED eligibility is considered following 504 when goals are not met.”

A number of injuries (e.g., fractured vertebrae; car accident; limited use of hand due to injury; burn) also were noted in the other category by school administrators and division coordinators. OCR has stated that “a temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a

substantial limitation of one or more major life activities for an extended period of time.” Extended period of time would exceed 6 months as defined by OCR (OCR FAQ, 2009).

Major life activities. Virginia's Section 504 personnel seem to have adopted a wide interpretation of major life activity in eligibility decisions. Most school administrators and division coordinators indicated that *learning* was the major life activity affected for their students with 504 plans with *accessing learning* second. Respondents to a national survey on Section 504 students confused *major life activity* with *impairment* on the survey, reporting impairments (78.1%) rather than major life activities under the *other* category of major life impairments (Holler & Zirkel, 2008). In this study, school administrators were similarly confused. Of the 18 *other* major life impairments provided by SAs, only 5 (27.77%) might be considered to have met the global criteria, e.g., kidney function, self-care, sitting/lying to standing, urination and writing (performing a manual task). Of the remaining 13 (72%), there is one clear impairment (i.e., ciliary dyskinesia) and a number of possible accommodations or related services (e.g., bathroom access, carry book bag, transportation).

What are typical accommodations? While confusion regarding impairments and major life activities has resulted in a wide variety of included characteristics, Virginia's Section 504 personnel have adopted a narrow standard for accommodations. Virginia's students with 504 plans were most commonly given classroom accommodations and testing accommodations with behavior management plans, medical services, and assistive technology used *sometimes*. Special transportation, special education and related services were *never* or *rarely* provided to students. School administrators entered 35 *other* accommodations, the most common of which was extra time. These data and the data on

the interpretation of the reasonable accommodation standard suggest a limited use of Section 504 entitlements. Classroom and testing accommodations, while beneficial to the student, do not represent a comprehensive approach to creating equal access for 504 students. A further danger inherent in the precedent set by limited usage is that students who need the less frequently used accommodations will be denied eligibility.

Research Question Cluster 4: Recent Claims

In what grades do most 504 plans occur in Virginia? The use of Section 504 plans for testing accommodations has created some controversy. Holler and Zirkel (2008) proposed that Section 504 plans might be given disproportionately to high school students seeking accommodations for college entrance testing. The use of 504 plans to boost the scores in standards testing required under No Child Left Behind also would be a misuse of the law. When asked to describe the purpose of Section 504 as compared to IDEA, three school administrators commented unguardedly that their divisions use 504 plans solely to assist with testing, specifically the Virginia Standards of Learning (SOL) tests, which are given in the third, fifth and eighth grades. By school administrators' reports, 46.35% of Virginia's 504 plans are held by fifth, sixth, seventh and eighth graders. Division coordinators' data places 46.45% of Section 504 plans in the hands of sixth, seventh, eighth and ninth graders. If Section 504 eligibility is being misused for testing accommodations in Virginia, these data would seem to indicate that they are being used for SOL testing rather than college entrance testing. To further investigate this possibility, additional research in the form of records reviews should be undertaken.

Is there disproportionality in the use of 504 plans in Virginia? This study investigated the possibility of ethnic disproportionality in Section 504 eligibility. Advocates and lawmakers are concerned that Black male students are being over-identified as students with disabilities under IDEA, perhaps because teachers, who are overwhelmingly White and female, may not understand their behavioral and cultural styles (Hale-Benson, 1986; Hilliard, 1992; IDEA, 2004). Other professionals are concerned about the faults in the eligibility and referral process (Hosp & Reschly, 2003). In any case, being misidentified as a student with a disability and being given an IEP is considered undesirable when the student is not disabled. Conversely, having an IEP when services are truly needed may greatly increase a student's chances of success. Since 504 plans have been studied on a limited basis, similar views of the desirability or stigmatizing effect of 504 plans remain unexplored.

The use of rate ratios to compare the risk of one ethnic group's chances of being identified as needing a 504 Plan or an IEP to another's provides a means to compare two sets of statistics. Rate ratios calculate only the relative prevalence or probability of such possibilities. As such, few would argue that all eligible students should have equal access to the services that either an IEP or 504 plan would afford them. Calculation of rate ratios from data provided by school administrators provided a relatively balanced ratio between Black and White students with 504 plans, so disproportionality in the most commonly investigated sense does not seem to exist. However, the gulf between the prevalence of other ethnicities and White students may suggest that Hispanic, Asian, American Indian, Hawaiian students, and students of unspecified ethnicity do not have equal access to the assistance that Section 504 might provide. School administrators and division

coordinators listed over 170 impairments their divisions had covered under Section 504. Is it possible that Hispanic, Asian, American Indian, Hawaiian students and students of unspecified ethnicity do not have any such impairments?

In Virginia, do wealthier school divisions implement more 504 plans? This research found little correlation between indicators of a division's wealth as measured by free and reduced lunch eligibility and per pupil expenditure and prevalence of 504 plans. Holler (2006) also found no connection between school wealth and 504 plans in a national study. Weiss (2000) and Gross (2002) had proposed that high income families might be manipulating the eligibility system to gain accommodations. The claims of misuse of 504 plans by parents in wealthier school divisions should be investigated at the national or state level by a stratified random sample design.

Research Question Cluster 5: Litigation

Does a review of Section 504 case law indicate conflicting decisions? The review of judicial decisions revealed the difficulties experienced in interpreting Section 504 at federal court levels. Federal judges long have been faced with the difficulty of making Section 504 decisions, along with or apart from those made under the Individuals with Disabilities Education Act (IDEA), in almost all the cases reviewed. The language of the law seems to encourage use of IDEA compliance procedures and states that use of IDEA evaluation procedures, procedural safeguards, individualized planning are one way of meeting requirements, but courts are unwilling to apply IDEA judicial standards to Section 504 claims when problems arise. IDEA has been defined more concisely both in regulations and litigations and wherever possible, judges and hearing officers will use the better understood and more widely tested standards of IDEA.

Judicial authorities using the bad faith and gross misjudgment standard are unlikely to find fault with school divisions or the team of teachers and administrators who oversee Section 504 eligibility and implementation at the school level. Virtually all such cases and the profession of education itself are permeated with decisions made for the good of the student, which would seem to dilute the possibility of bad faith or gross misjudgment. Such decisions also mean that a chance to provide a workable interpretation of the discrimination standard has been lost. Due to the unclear nature of the relationship between IDEA and Section 504, judges may have refrained from interpreting Section 504 when possible. Section 504 will remain an enigma in federal and state court as long as judges avoid making decisions based solely on Section 504.

Conclusions of the Study

Virginia appears to have a similarly small percentage of students with 504 plans as has been found in other studies (Holler, 2006; Seese, 2003). Despite training efforts from the VDOE and school divisions, 504 prevalence figures may be influenced by school administrators' and division coordinators' variable knowledge of Section 504 procedure. Virginia's students with impairments face several challenges in the process of gaining Section 504 services and protections. Based on the data reported in this study, a Virginia student with an impairment who is failing to meet expectations in his general education classes has a 25% chance of attending a school in which his general educators were included in recent Section 504 training. If that student does poorly enough to be referred for evaluation under IDEA and is found ineligible, in 77.6% of the respondent schools, he will not then routinely be considered for eligibility under Section 504. Overseeing this process is the student's Section 504 school administrator, who has at

least one other duty at the school, most often that of principal. If the student in question is Hispanic or of unspecified ethnic origin he stands a less than equal chance, compared to a White or Black student, of being found eligible at all.

If the student overcomes these obstacles and is evaluated under Section 504, chances are that he will have an eligibility team that is confused about whether the student's impairment creates a substantial limitation on one of the student's major life activities. In over half of the schools, the team will be unsure or will use the wrong comparative frame of reference to decide the impact of the student's impairment. When considering mitigating measures, there is a 77.5% chance that the student's school eligibility team will either use the incorrect standards (with mitigating measures or both) or be unsure which to use.

If the student is found eligible for Section 504, the scope of services is likely to be limited to accommodations in the general education classroom, with 73.6% of eligibility teams avoiding accommodations that might pose an undue hardship on the school. The student has a little to no chance of being given a behavior management plan in 44.4% of the schools and a similarly small chance of being given assistive or adaptive technology in 61.28% of the schools. Once an eligible student has a 504 plan, there may be problems with the school's process for informing all of his teachers of the plan and for ensuring consistent provision of his accommodations. If his parents are dissatisfied with the implementation of the student's plan and wish to use due process, grievance and hearing procedures will be unavailable or unknown in 15.26% of the schools. Requesting a due process hearing may provide an unpredictable result as hearing officers may apply legal standards inconsistently. If the family considers legal venues outside of due process, the

current erratic standard of deference makes succeeding under Section 504 unlikely. In sum, Virginia's students with impairments have limited and uneven access to the rights that Section 504 could provide.

Implications

The present study raises questions about the equity of educational opportunity for Virginia's students with impairments. Students' rights under Section 504 appear to be inconsistently enforced and protected. There are some clear misunderstandings in the eligibility process, training appears to be misdirected, and it is not clear that due process hearings appropriately support students with 504 plans. The following comments from school administrators may be indicative of problems at the school level:

- “Our school system usually doesn't write 504's regularly due to this is a Civil Rights law-not education.”
- “At this high school the only 504s we have are ones that we have inherited. We have not developed a 504 for any student.”
- “In the prior division that I have worked in, 504s had been heavily discouraged. Child Study Plans were encouraged.”

It is evident that all school personnel must gain a better understanding of Section 504 (Brady, 2004; Holler & Zirkel, 2008; Madaus & Shaw, 2008) to preserve the rights of Virginia's students with impairments. There are three possible approaches to increasing understanding at all levels: improving implementation guidelines at the national level via OCR (National Council on Disability, 2003); creating clear guidelines at the state level through the state departments of education (Katsiyannis & Conderman,

1994) or increasing understanding of the law in teacher preparation programs (Shaw & Madaus, 2008). Arguably, all three remedies must occur for the law to fulfill its potential.

The Office for Civil Rights is in charge of enforcement of Section 504 among other legislative mandates. Changes to OCR policy could come from the Department of Education or through a reauthorization of the Rehabilitation Act of 1973 that included more detailed enforcement guidelines. Either of these options might be best achieved by a strong grass roots campaign by advocacy organizations and concerned individuals, just as such changes were made 36 years ago when the law was enacted. The recent reauthorization of the Americans with Disabilities Act in 2008 resulted in some small but meaningful changes to Section 504, like the reversal of the mitigating measures standard and the addition of reading, thinking and concentration as major life activities. However, information about these changes to be poorly disseminated at this time and their scope in the field of public education remains to be determined.

Perhaps because of the limited functional guidelines provided by the Office for Civil Rights and case law, the Virginia Department of Education has used a cautious approach in supporting school divisions in their implementation of Section 504. The VDOE's involvement with division Section 504 policy echoes the scope of enforcement used by OCR. Like OCR, the VDOE has attempted to ensure that policies are in place. Beyond that, and short of sweeping changes to Section 504 that the reauthorization of the ADA occasioned, the VDOE has chosen to leave the training and implementation to the school divisions. While this position meets the letter of the law, it does not seem to serve the intent of the law.

The Office for Civil Rights has reiterated often that issues that are poorly defined under the law can be decided on a case-by-case basis or by state or local authorities. In 1994, Katsiyannis and Conderman called for leadership and an end to the reluctance to develop Section 504 policies, citing Virginia as an example of a state that provided only general guidelines. In 2009, the Virginia Department of Education has an Office of Federal Programs Monitoring, state-level compliance personnel and a network of Section 504 school administrators and division coordinators in place and therefore has the capability to take the lead in and move beyond conservative implementation of the law. The VDOE could choose to develop more proactive, widespread and enforceable Section 504 policies to truly improve the outcomes of some of Virginia's students bound for failure.

Teacher preparation programs at the university level must be modified to ensure that general education, principal and administration programs are more familiar with Section 504 policy. As noted by Shaw and Madaus (2008), many preparation programs for general educators include a special education law or inclusion class. These classes should devote a portion of the course to helping students develop a truly functional understanding of Section 504. Perhaps even more appropriately, general education, principal and administration programs should develop and require a law class for those in general education. Course content should include determining Section 504 eligibility, understanding 504 procedures and understanding the law among other competencies (Shaw & Madaus, 2008).

Section 504 is a broadly worded statement aimed at eliminating discrimination in federally funded programs. The Section 504 regulations confer intent and responsibility

for elementary and secondary schools. The educational implications of the regulations may have been supplanted by the federally-funded and better defined Individuals with Disabilities Education Act. However, the law does create entitlements for students with impairments that could address their educational needs directly. Constructing a workable standard for Section 504 by strengthening Office for Civil Rights implementation guidelines, conferring more responsibility to the state departments of education and focusing on the law in teacher preparation programs and continuing to use IDEA coverage where appropriate would create a two tiered system of support for struggling students. A diversified support system would allow our nation's schools to move closer to serving *all* students.

Recommendations for Future Study

This study and others like it have created a tentative baseline for Section 504 implementation. The bulk of the research on Section 504, including this study, has focused on the problems of eligibility for services under the law. This approach has been a legitimate line of inquiry considering the lack of clarity of the requirements. However, and despite the indications that eligibility is poorly understood, future studies should undertake to define and measure the efficacy and outcomes of 504 plans as they currently exist, including assessment of student and parent satisfaction and academic effects. Such endeavors might have the secondary effect of renewed efforts to clarify the policy and procedures of Section 504 by creating a tangible result associated with their use. Section 504 has considerable potential that could advance toward realization with well-directed research.

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APPENDIX A

Section 504

TITLE 34 EDUCATION

SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF
EDUCATION

CHAPTER I -- OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

**PART 104 -- NONDISCRIMINATION ON THE BASIS OF HANDICAP IN
PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL
ASSISTANCE****Subpart A -- General Provisions**

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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.

SOURCE: 45 FR 30936, May 9, 1980, unless otherwise noted.

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 the program or activity that receives 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 persons* 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) *Program or activity* means all of the operations of--

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) *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.

(m) *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 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 or activity;

(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 aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services 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 or activity 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 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 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) *Aid, benefits or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services 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 to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity 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 or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity 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 program or activity. 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 or activities 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 apprenticeships.

(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 those that are social or recreational; 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 Reasonable 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 or activity.

(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 or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity 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 preemployment medical examination or may not make preemployment 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 preemployment 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 of 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--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) *Accessibility.* A recipient shall operate its program or activity so that when each part is viewed in its entirety, it 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 serve 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 accessibility in order to comply with paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps of 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 subpart 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, as amended at 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 or activities that receive Federal financial assistance and to recipients that operate, or that receive 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 or activity 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 or activity 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 or refer such a person for aid, benefits, or services other than those that it operates or provides 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 or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. 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 or refers such person for aid, benefits, or services not operated or provided 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 aid, benefits, or services 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 aid, benefits, or services operated by the recipient.

(3) *Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, 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 a free appropriate public education 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 or activity 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 regular or special education 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 or activity 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 non-academic 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 aid, benefits, or services 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.

(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.

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

104.39 Private education.

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

(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 provides special education shall do so 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.

Subpart E -- Postsecondary Education

104.41 Application of this subpart.

Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6(a) or 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), the recipient may invite applicants for admission 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 action efforts; and

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

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

104.43 Treatment of students; general.

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

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate.

104.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

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

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

104.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

104.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not,

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

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

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates subpart B.

104.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services 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 intercollegiate, 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 only if separation or differentiation is consistent with the requirements of 104.43(d) 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.

(b) *Counseling and placement 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. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F -- Health, Welfare, and Social Services

104.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.52 Health, welfare, and other social services.

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

- (1) Deny a qualified handicapped person these benefits or services;
- (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in 104.4(b)) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

104.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

104.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity that provides aid, benefits or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D.

Subpart G -- Procedures

104.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 100.6-100.10 and part 101 of this title.

APPENDIX B

Comparison of IDEA, Section 504 and ADA

Table B1

IDEA, Section 504 and the ADA A Comparison

IDEA	SECTION 504	AMERICANS WITH DISABILITIES ACT (ADA)
	YEAR ENACTED	
1975	1973	1990
	LEGAL CITATION	
20 USC 1400 et. Seq. 34 CFR Part	29 USC 794 34 CFR Part 104	42 USC 12134 28 CFR Part 35
A Federal funding statute whose purpose is to provide financial aid to states in the efforts to ensure adequate and appropriate services for children with disabilities.	A broad civil rights law which protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education.	A broader civil rights statute than 504 extending protection to individuals with disabilities in private industry employing more than 15 individuals. Includes public entities, public accommodations, telecommunications and private nonsectarian schools.
	CHILD FIND	
Must identify, locate and evaluate all children with disabilities who are in need of special education and related services, including homeless, wards of state, and those attending private schools, highly mobile and migrant, regardless of severity of disability. (§300.111)	A recipient (of federal funds) that operates a public elementary or secondary school must annually undertake to identify and locate every qualified student and take steps to notify parents of school's duty under Section 504. (§104.32)	None.
	WHO IS COVERED?	
Infants and toddlers with disabilities 0-2; children 3-21 who meet the definition of one of the specific disabilities applicable to school age children. An Individual Education Program (IEP) is developed to provide required services.	Identifies children that have a disability who meet the definition. The child (1) has or (2) has had a physical impairment which substantially limits a major life activity or (3) is regarded by other as disabled. Major life activities include walking, seeing, hearing, breathing,	Any person with a physical or mental impairment which substantially limits one or more major life activities such as self care, manual tasks, walking, seeing, breathing, learning, or working. In addition discrimination is prohibited because the person has a record of having such

	learning, working, caring for oneself and performing manual tasks. An Accommodations Plan is written only for eligible children who currently have a disability.	impairment, or is regarded as having such impairment.
	FUNDING	
Provides additional funding to public schools for eligible students. IDEA funds may not be used to serve children who are eligible only under Section 504.	No additional funds provided. IDEA funds may not be used to serve children who are eligible only under Section 504.	No additional funds are provided.
	Program Access	
Each public agency must take steps to provide both academic and nonacademic services and activities in such a manner as necessary to afford eligible children with disabilities an equal opportunity for participation in those services and activities. (§300.107)	Rule: No qualified individual with a disability shall, because a public recipient's facilities are inaccessible or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity. However, the recipient (of Federal funds) is not required to make each existing facility or every part of an existing facility accessible. (Subpart C §104.21)	Rule: No qualified individual with a disability shall, because a public entity's facilities are inaccessible or unusable by disabled individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity. Facility accessibility rule is same as under Section 504. Does not require fundamental alteration of the nature of the service, program or activity.
	Procedural Safeguards	
Requires procedural safeguards notice to parent/guardian with respect to identification, evaluation, and/or placement. Delineates required components of notice. Requires prior written notice a reasonable time before agency proposes or refuses to initiate or change the identification, evaluation, placement or provision of FAPE to a child. (§300.503-504)	Requires a system that includes notice to parent or guardian, an opportunity to examine relevant records, an impartial hearing with the opportunity to participate and be represented by counsel, and a review procedure. Rights are not as detailed as under IDEA but IDEA procedural safeguards will suffice as one means of meeting this requirement. (Subpart C §104.36)	None.

	RESPONSIBILITY TO PROVIDE A FREE APPROPRIATE PUBLIC EDUCATION (FAPE)	
<p>Requires the provision of a FAPE to eligible students, including specially designed instruction and related services.</p> <ul style="list-style-type: none"> • Requires a written IEP document with specific content and a required number of specific participants at a meeting. • “Appropriate” means a program reasonably designed to confer educational benefit. • Related services are provided if required for the student to benefit from specially designed instruction. (§300.101-103) 	<p>Requires the provision of FAPE to eligible students, including the provision of regular or special education and related aids and services that are (1) designed to meet the needs of the disabled as adequately as the needs of nondisabled students are met and (2) based upon required procedural safeguards.</p> <ul style="list-style-type: none"> • Does not require a written document, but does require a plan [A written plan is dictated by sound professional practice.] • “Appropriate” means an education comparable to that provided to nondisabled students. • Related services, independent of special education as defined under IDEA, may be the accommodations. (§104.33) 	None.
	LEAST RESTRICTIVE ENVIRONMENT (LRE)	
<p>The placement of eligible students in special classes, separate schools or other removal from the regular educational occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. In addition, the placement must</p>	<p>The student shall be placed in the regular education environment unless the child’s education cannot be achieved satisfactorily even with the use of supplementary aids and services. [It is rare for an eligible student to be placed in a setting other than the regular education classroom.] (§104.34)</p>	None.

<p>provide special education, to the maximum extent appropriate to the needs of the students, with other students who do not have a disability, and be as close as possible to the students home. (§300.114)</p>		
	Multidisciplinary Team	
<p>Defines specific membership, including the parent, and required attendance of the IEP Team. (§300.321)</p>	<p>Decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Parent is not specifically included in meetings, but most agencies do invite parent participation. (§104.35)</p>	None.
	Evaluation	
<p>A full and individual comprehensive evaluation is required, assessing all areas related to the suspected disability. Specific requirements are detailed, including parental informed consent. Identified disability must result in an adverse effect on educational performance to the extent that specially designed instruction is required for the student to receive a FAPE.</p> <ul style="list-style-type: none"> • Provides for independent evaluation at school expenses if parent disagrees with evaluation provided by school and hearing officer agrees. (§300.300-305; §300.8; §300.52) 	<p>Evaluation draws upon information from a variety of sources in the area of specific concern. Requires parental notice; OCR regional offices advise that consent is also required. Identified disability must result in a substantial limitation of a major life activity.</p> <ul style="list-style-type: none"> • No provision for independent evaluation at school expense, but school should consider any information presented by parents. (§104.35; §104.3) 	None.

<p>Reevaluation must be conducted to determine whether the child continues to have a disability, and the educational needs of the child. Informed parent consent is required, unless district can show parent did not respond to contact attempts made by district.</p> <ul style="list-style-type: none"> • Required every three years; if existing data is sufficient to make decisions, additional assessment may not be needed. • Must conduct reevaluation before determining child no longer has a disability, except: • Reevaluation not required before graduation or aging out, but a summary of academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals must be provided. (§300.305; §300.300) 	<p style="text-align: center;">REEVALUATION</p> <p>Requires periodic reevaluations. IDEA schedule for reevaluations will suffice.</p> <p>No provision for independent evaluation at district expense. District should consider any evaluations presented by parent.</p> <ul style="list-style-type: none"> • Reevaluation is required before a significant change in placement. (§104.35) [Graduation is a significant change in placement; district is advised to consider giving the summary of academic and functional performance, as per IDEA requirements.] 	<p style="text-align: center;">None.</p>
<p>When making placement decisions, the district:</p> <ul style="list-style-type: none"> • Ensures that eligibility and placement decisions are made by the parent of the child and a specified group of qualified professionals with knowledge about the 	<p style="text-align: center;">PLACEMENT PROCEDURES</p> <p>When making placement decisions, the district must:</p> <ul style="list-style-type: none"> • Ensure that the eligibility and placement decisions are made by a group of persons including those who are knowledgeable about the child, the meaning 	<p style="text-align: center;">None.</p>

<p>child, the general education curriculum, the meaning of evaluation data, and the placement options.</p> <ul style="list-style-type: none"> • Makes a placement decision without the parent if the district can show a record or attempts to involve the parent. • Ensures that the child is educated with nondisabled peers to the maximum extent appropriate (LRE). • An IEP review meeting is required before a change in placement. 	<p>of the evaluation data and placement options.</p> <ul style="list-style-type: none"> • Ensure that the student is educated in the regular education environment with nondisabled peers to the maximum extent appropriate (LRE). 	
	<p>ACCOMODATIONS/UNDUE HARDSHIP</p>	
<p>FAPE must be made available to any eligible child with a disability; eligible children must be afforded an equal opportunity for participation in both extracurricular and nonacademic services and activities. (§300.101; §300.107)</p>	<p>In determining whether an accommodation would cause an undue hardship on program operation, factors to be considered include size of the program and its budget, type of operation, and nature and cost of the accommodation. § 104.12 O C R has stated that this consideration does not apply to schools and the provision of a FAPE; however, it does apply to extracurricular and nonacademic activities.</p>	<p>Size of the business and its budget, type of operation, nature and cost of accommodation is considered.</p>
	<p>DRUG AND ALCOHOL USE</p>	
<p>Schools may remove a student to an Interim Alternative Educational Setting (IAES) for up to a specified time without regard to whether the behavior is a manifestation of the disability if the child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled</p>	<p>Schools may take disciplinary action pertaining to use or possession of illegal drugs or alcohol against any student to the same extent such disciplinary action is taken against students who are not disabled. Due process protections at §104.36 do not apply.</p>	<p>Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes direct threat to property or safety of others is not considered a disability.</p>

<p>substance, while at school, on school premises, or at a school function. (§300.530(g)(2))</p>		
	DISCIPLINE	
<p>Any disciplinary removal or more than 10 consecutive days is a significant change in placement triggering the procedural safeguards of IDEA.</p> <p>Cumulative removals or more than 10 days within the school year for separate incidents of misconduct may, or may not, constitute a change of placement.</p> <p>If a disciplinary change of placement is being considered, a manifestation determination must be conducted.</p> <p>Special circumstances are defined under which a child may be moved to an IAES without regard to the manifestation determination.</p> <p>Right to a FAPE continues.</p>	<p>District must reevaluate the child prior to any disciplinary removal for more than 10 days.</p> <p>Is there a nexus between the child's disability and the behavior complained of? If "yes", the child may not be removed for more than 10 consecutive days unless the behavior is drug/alcohol related.</p> <p>No automatic right to remain in the current placement.</p> <p>Right to FAPE may cease due to a disciplinary action. [Follow state laws regarding cessation of services to any student.]</p>	<p>Amends §504 to create exception for discipline of drug and alcohol related behavior.</p>
	DUE PROCESS	
<p>Requires districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation or placement of a student. Exhaustion of administrative remedies is required.</p> <p>Delineates specific requirements.</p>	<p>Requires districts to provide impartial hearing for parents or guardians who disagree with the identification, evaluation or placement of a student.</p> <p>Requires that the parent have an opportunity to participate and be represented by counsel.</p> <p>No exhaustion of remedies component. Other details are left to the discretion of the district. [Local policy statements should clarify details.]</p>	<p>None.</p>

	PROTECTION AGAINST RETALIATION	
Civil Rights protections under Section 504 apply. Any child with an IEP is protected under Section 504.	Incorporates prohibition against retaliation, intimidation, coercion, threats and discrimination found in regulations under Title VI of the Civil Rights Act.	Extends protections to non-disabled individuals who have testified or participated in any manner in an investigation, proceeding or hearing.
	SELF EVALUATION	
None.	Requires recipients to conduct a self-evaluation to identify discriminatory policies and practices.	By January 26, 1993, school districts were required to update their Section 504 self-evaluation, involving constituent groups, to assure compliance with ADA.
	INTERNAL GRIEVANCE PROCEDURE	
State complaint procedures required.	Requires districts with 15 or more employees to designate a compliance officer and have a grievance procedure to investigate complaints.	Requires public entities with more than 50 employees to designate a compliance officer and have a grievance procedure to investigate complaints.
	EXHAUSTION OF REMEDIES	
Requires the parent or guardian to pursue administrative hearing before seeking redress in the court. Compensatory awards possible.	Administrative hearing not required prior to OCR involvement or court action. Compensatory awards possible.	None.
	Compliance/Enforcement	
<p>Enforced by the U.S. Office of Special Education Programs, Department of Education (OSEP)</p> <ul style="list-style-type: none"> • Compliance is monitored by the State Department of Education and the Office of Special Education Programs. • The State Department of Education resolves complaints. • Non-compliance may 	<p>Enforced by the U.S. Office for Civil Rights, Department of Education (OCR)</p> <ul style="list-style-type: none"> • State Department of Education has no monitoring, complaint resolution or funding involvement for local school districts. • Non-compliance may result in a loss of all federal funds. 	<p>Enforced by the U.S. Office for Civil Rights, Department of Education (OCR)</p> <ul style="list-style-type: none"> • State Department of Education has no monitoring, complaint resolution or funding involvement for local school districts. • Non-compliance may result in a loss of all federal funds.

result in the loss of IDEA funds and state aid.		
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Note. From *Section 504 and ADA: Promoting student access. A resource guide for*

educators (3rd ed.) by Council of Administrators of Special Education (CASE), 2006, p.

21-28.

APPENDIX C

Cover Letter and Survey Instrument for Section 504 Division Coordinators

Coordinator's title, first, last Name
School
School address
Add'l address
City, state, zip

Date

Dear title last name,

I am asking for your help with an important task: providing a comprehensive assessment of Section 504 compliance/understanding in Virginia. You may have noticed increased interest in Section 504 coverage from parents and advocates. The purpose of this survey and my dissertation is to assess Virginia's current state of understanding and implementation of Section 504. Your responses will be invaluable. If you are not the division's Section 504 coordinator, please hand this survey to the person who fills that role.

All information that you provide is confidential. Your identity and responses will be coded with a research number. When you return this survey, it indicates your consent to participate in the survey. Your participation is voluntary. If you choose not to participate, do not return the survey. Respondent and non-respondent information will remain confidential. If you choose to participate, however, your name will be entered in a drawing to receive a \$300, \$200 or \$100 Target gift card.

In order to fill out this survey, you will need information about the students in your division who have 504 plans. You will also be asked to provide the same information about students with IEPs. Please provide accurate numbers and complete all blanks. If you would like to have a final copy of your division's results to be used for training or other informative purposes, please indicate this on your survey.

You may also complete this survey online at: x. Your research number is x. Please complete all blanks and click submit at the end.

Thank you for taking the time to provide this information. Please email me at amaydosz@odu.edu if there are questions or problems with this study.

Sincerely,

Ann Maydosz
Doctoral Candidate
Old Dominion University

Section 504 Division-Level Coordinator Survey

Research number: XXXX

Name of your school division: _____
 (optional)

Part I: Demographics

1. What role(s) do you fill in your school division other than the role of Section 504 Coordinator?

Fill in blank with other role(s): _____

The following questions will require specific knowledge about students with 504 plans and IEPs in your division. Please gather this information from your records.

2. How many students in your division have Section 504 plans? Please enter number of students with **ONLY** Section 504 plans. Do not include IDEA/IEP students.

Total number of students in division with 504 plans

(Enter **a count** of students with 504 plans in your division, not a percentage of the student population)

3. What is the ethnicity of your students with Section 504 plans? (Please enter **a count** of students with **ONLY** Section 504 plans in your division by ethnicity, not percentages, please.)

Black/Non Hispanic _____

White/ Non Hispanic _____

Hispanic _____

Asian/Pacific Islander _____

American Indian/Alaskan _____

Native Hawaiian/Other Pacific Islander _____

Unspecified _____

4. What is the gender of your students with **ONLY** Section 504 plans in your division? (Please enter **a count** of the male and female students with **ONLY** Section 504 plans in your division, not percentages, please.)

Male _____

Female _____

5. Please provide total the number of students with **ONLY** Section 504 plans for **each grade level** in your division.

- Kindergarten _____
- 1st _____
- 2nd _____
- 3rd _____
- 4th _____
- 5th _____
- 6th _____
- 7th _____
- 8th _____
- 9th _____
- 10th _____
- 11th _____
- 12th _____
- Other (please specify) _____

6. How many students in your division have individualized education plans (IEPs)? Please enter students with **ONLY** IEPs.

Total number of students in division with **ONLY** IEPs

(Please enter a **count** of students with IEPs in your division, not a percentage of the student population.)

7. What is the ethnicity of your students with **ONLY** IEPs? (Please enter a count of students with **ONLY** IEPs in your division by ethnicity, not percentages, please.)

- Black/Non Hispanic _____
- White/ Non Hispanic _____
- Hispanic _____
- Asian/Pacific Islander _____
- American Indian/Alaskan _____
- Native Hawaiian/Other Pacific Islander _____
- Unspecified _____

8. What is the gender of your students with **ONLY** IEPs in your division? (Please enter a count of the male and female students with **ONLY** IEPs in your division, not percentages, please.)

- Male _____
- Female _____

9. Which impairments led to eligibility for a Section 504 plan in your division? Please provide the total numbers of students in your division who received only a Section 504 plan for each applicable impairment listed below. You do not need to enter 0's for non-applicable impairments.

- a. ADHD _____
- b. AIDS/HIV infection _____
- c. Arthritis _____
- d. Asthma _____
- e. Cerebral palsy _____
- f. Chronic fatigue syndrome _____
- g. Conduct disorder _____
- h. Crohn's disease _____
- i. Depression _____
- j. Diabetes _____
- k. Drug/alcohol abuse _____
- l. Dyslexia _____
- m. Eating disorders _____
- n. Emotional disturbance _____
- o. Epilepsy (seizure disorder) _____
- p. Hearing impairment _____
- q. Heart disease/cardiac impairment _____
- r. Hemophilia _____
- s. Hyperthyroidism _____
- t. Kidney disease _____
- u. Learning disabilities _____
- v. Mental retardation _____
- w. Multiple sclerosis _____
- x. Oppositional defiant disorder _____
- y. Peanut/tree nut allergy _____
- z. Physical/sexual abuse _____
- aa. Posttraumatic stress disorder _____
- bb. Reading difficulties _____
- cc. School phobia _____
- dd. Sexually transmitted diseases _____
- ee. Social maladjustment _____
- ff. Suicidal tendencies _____
- gg. Tourette syndrome _____
- hh. Visual impairment _____
- ii. Other (*please specify*) _____
- jj. Information not available in records _____

10. Which major life activity has been limited for your Section 504 students?
Please provide total numbers of students per major life activity for **every** student served with only a Section 504 plan in your division.

- a. Learning _____
- b. Accessing learning _____
- c. Breathing _____
- d. Hearing _____
- e. Seeing _____
- f. Walking _____
- g. Speaking _____
- h. Working _____
- i. Performing manual tasks _____
- j. Sitting _____
- k. Reaching _____
- l. Stooping _____
- m. Other (*please specify*) _____

11. What types of accommodations have been provided to your Section 504 students?

Please provide an estimation of the frequency of use for each accommodation
(0 = never used; 1 = rarely used; 2 = sometimes used; 3 = frequently used)

	Never	Rarely	Sometimes	Frequently
Behavior management plans	0	1	2	3
Testing accommodations (examples: extended time, having test read to student)	0	1	2	3
Classroom accommodations (examples: second set of texts, extra time to get to class)	0	1	2	3
Medical services	0	1	2	3
Special transportation	0	1	2	3
Assistive technology or adaptive devices	0	1	2	3
Special education services	0	1	2	3
Related services	0	1	2	3
Other (<i>please specify</i>)	0	1	2	3

Part II. Training	
<p>12. Does your division have a formal, written school board policy concerning Section 504?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Don't know or unsure</p>	
<p>13. Does your division have specific forms for Section 504 evaluations, eligibility and 504 plans?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Don't know or unsure</p>	
<p>14. Does your division have formal, written grievance and hearing procedures for Section 504 disputes?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Don't know or unsure</p>	
<p>15. When was the last time training was conducted in your division concerning Section 504?</p> <p><input type="checkbox"/> This current academic year <input type="checkbox"/> Last academic year <input type="checkbox"/> 2 to 5 years ago <input type="checkbox"/> More than 5 years ago <input type="checkbox"/> Don't know (<i>please skip to question 19</i>)</p>	
<p>16. Please identify the group(s) that received training during the most recent Section 504 training conducted in your division (<i>check all that apply</i>).</p> <p><input type="checkbox"/> Special educators <input type="checkbox"/> General educators <input type="checkbox"/> Guidance counselors <input type="checkbox"/> Entire division <input type="checkbox"/> Other (<i>please specify</i>) _____</p>	
<p>17. How helpful was the most recent Section 504 training?</p> <p><input type="checkbox"/> Very helpful <input type="checkbox"/> Helpful <input type="checkbox"/> Somewhat helpful <input type="checkbox"/> Not at all helpful</p>	

18. Who provided the training?

- School division personnel
- Outside expert
- Other (*please specify*) _____

19. On average, how often do school personnel or administrators seek assistance with Section 504 issues/matters?

- 10-15 times a semester
- 5-9 times a semester
- 1-4 times a semester
- Never
- Other (*please specify*) _____

20. What aspects of Section 504 do school personnel or administrators seek assistance with most often? (*please choose the most frequent aspect and give examples*)

- Eligibility (*please give examples*) _____

a. Discipline (*please give examples*) _____

b. Dispute resolution (*please give examples*) _____

c. Accommodations (*please give examples*) _____

d. Other (*please give examples*) _____

<p>21. To your knowledge, has an Office for Civil Rights complaint alleging a violation of Section 504 ever been filed against your school division?</p> <p>a. No</p> <p>b. Yes (<i>please give details</i>)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>c. Don't know or unsure</p>
<p>22. To your knowledge, has your division ever requested that an attorney review your Section 504 procedures?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> Don't know or unsure</p>
<p>23. May students on only Section 504 plans receive special education (instructional services) in your division?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> Don't know or unsure</p>
<p>24. May students on only Section 504 plans receive related services in your division?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> Don't know or unsure</p>
<p>25. Should the Section 504 evaluation team consider the student's eligibility with or without mitigating measures? Some examples of mitigating measures are glasses, a prosthesis and medication.</p> <p>a. With mitigating measures</p> <p>b. Without mitigating measures</p> <p>c. Don't know or unsure</p>

26. To decide whether the student has a substantial limitation that would qualify the student under Section 504, what comparative frame of reference should the Section 504 evaluation team use?

- a. Child's potential educational performance compared to his/her current educational performance
- b. Child's educational performance compared to an average student of same age and grade
- c. Don't know or unsure
- d. Other (*please specify*) _____

27. Must the accommodations given to a student on a Section 504 plan be considered reasonable? In this case, "reasonable" means that the accommodation should not impose an undue hardship on the operation of a school or program.

- No
- Yes
- Don't know or unsure

28. Have evaluation teams been advised to consider a student for Section 504 eligibility after finding child ineligible for an IEP under IDEA?

- No
- Yes
- Don't know or unsure

29. Has your division been informed about the changes to Section 504 that accompany the recent amendments to the Americans with Disabilities Act?

- No
- Yes
- Don't know or unsure

30. What is the purpose of Section 504 as compared to the Individuals with Disabilities Education Improvement Act (IDEA)?

APPENDIX D

Cover Letter and Survey Instrument for Section 504 School Administrators

Principal's title, first, last Name
School
School address
Add'l address
City, state, zip

Date

Dear title last name,

I am asking for your help with an important task: providing a comprehensive assessment of Section 504 compliance/understanding in Virginia. You may have noticed increased interest in Section 504 coverage from parents and advocates. The purpose of this survey and my dissertation is to assess Virginia's current state of understanding and implementation of Section 504. Your responses will be invaluable. If you are not the school's Section 504 administrator, please hand this survey to the person who fills that role.

All information that you provide is confidential. Your identity and responses will be coded with a research number. When you return this survey, it indicates your consent to participate in the survey. If you choose not to participate, do not return the survey. Respondent and non-respondent information will remain confidential. If you choose to participate, however, your name will be entered in a drawing to receive a \$300, \$200 or \$100 Target gift card.

In order to fill out this survey, you will need information about the students in your building who have 504 plans. You will also be asked to provide the same information about students with IEPs. Please provide accurate numbers and complete all blanks.

You may also complete this information online at: x. Your research number is x. Please complete all blanks and click submit at the end.

Thank you for taking the time to provide this information. Please email me at amaydosz@odu.edu if there are questions or problems with this study.

Sincerely,
Ann Maydosz
Doctoral Candidate
Old Dominion University

Section 504 Administrator Survey: School Level

Research number:

Name of your school

(optional):

Part I: Demographics

1. What level or levels of instruction are provided in your building? (*check all that apply*)

- preschool
- elementary
- middle
- high school
- other (*please specify*) _____

2. What is your primary school role other than Section 504 Administrator? (*choose one*)

- Principal
- Assistant principal
- Guidance counselor
- General education teacher
- Special education teacher
- School psychologist
- Other (*please specify*) _____

The following questions will require specific knowledge about students with 504 plans and IEPs in your school. Please gather this information from your records.

3. How many students in your school have Section 504 plans? Please enter number of students with **ONLY** Section 504 plans. Do not include IDEA/IEP students.

Total number of students in school with **ONLY** 504 plans

 (*Enter a head count of students with 504 plans in your school, not a percentage of the student population*)

4. What is the ethnicity of your students with **ONLY** Section 504 plans? (*Please enter a **head count** of students with Section 504 plans in your school by ethnicity, not percentages.*)

Black/Non Hispanic _____
 White/ Non Hispanic _____
 Hispanic _____
 Asian/Pacific Islander _____
 American Indian/Alaskan _____
 Native Hawaiian/Other Pacific Islander _____
 Unspecified _____

5. What is the gender of your students with **ONLY** Section 504 plans in your school? (*Please enter a **head count** of the male and female students with Section 504 plans in your school, not percentages.*)

Male _____
 Female _____

6. Please provide total the number of students with **ONLY** Section 504 plans for **each grade level** in your school.

Pre-Kindergarten _____
 Kindergarten _____
 1st _____
 2nd _____
 3rd _____
 4th _____
 5th _____
 6th _____
 7th _____
 8th _____
 9th _____
 10th _____
 11th _____
 12th _____
 Other (*please specify*) _____

7. How many students in your school have individualized education plans (IEPs)? Please enter students with **ONLY** IEPs.

Total number of students in school with IEPs _____
 (Please enter a **head count** of students with IEPs in your school, not a percentage of the student population.)

8. What is the ethnicity of your students with IEPs? (Please enter total numbers of students with **ONLY** IEPs in your school by ethnicity, not percentages.)

Black/Non Hispanic _____
 White/ Non Hispanic _____
 Hispanic _____
 Asian/Pacific Islander _____
 American Indian/Alaskan _____
 Native Hawaiian/Other Pacific Islander _____
 Unspecified _____

9. What is the gender of your students with **ONLY** IEPs in your school? (Please enter a head count of the male and female students with IEPs in your school, not percentages.)

Male _____
 Female _____

Please continue....

10. Which impairments led to eligibility for a Section 504 plan in your school? Please provide the total numbers of students in your school who received only a Section 504 plan for each impairment listed below. You do not need to enter 0's for non-applicable impairments.

- a. ADHD _____
- b. AIDS/HIV infection _____
- c. Arthritis _____
- d. Asthma _____
- e. Cerebral palsy _____
- f. Chronic fatigue syndrome _____
- g. Conduct disorder _____
- h. Crohn's disease _____
- i. Depression _____
- j. Diabetes _____
- k. Drug/alcohol abuse _____
- l. Dyslexia _____
- m. Eating disorders _____
- n. Emotional disturbance _____
- o. Epilepsy (seizure disorder) _____
- p. Hearing impairment _____
- q. Heart disease/cardiac impairment _____
- r. Hemophilia _____
- s. Hyperthyroidism _____
- t. Kidney disease _____
- u. Learning disabilities _____
- v. Mental retardation _____
- w. Multiple sclerosis _____
- x. Oppositional defiant disorder _____
- y. Peanut/tree nut allergy _____
- z. Physical/sexual abuse _____
- aa. Posttraumatic stress disorder _____
- bb. Reading difficulties _____
- cc. School phobia _____
- dd. Sexually transmitted diseases _____
- ee. Social maladjustment _____
- ff. Suicidal tendencies _____
- gg. Tourette syndrome _____
- hh. Visual impairment _____
- ii. Other (please specify) _____
- jj. Information not available in records _____

11. Which major life activity has been limited for your Section 504 students? Please provide total numbers of students per major life activity for **every** student served with only a Section 504 plan in your school.

- a. Learning _____
- b. Accessing learning _____
- c. Breathing _____
- d. Hearing _____
- e. Seeing _____
- f. Walking _____
- g. Speaking _____
- h. Working _____
- i. Performing manual tasks _____
- j. Sitting _____
- k. Reaching _____
- l. Stooping _____
- m. Other (*please specify*) _____

12. What types of accommodations have been provided to your Section 504 students? Please provide an estimation of the frequency of use for each accommodation (0 = never used; 1 = rarely used; 2 = sometimes used; 3 = frequently used)

	Never	Rarely	Sometimes	
Frequently				
Behavior management plans	0	1	2	3
Testing accommodations (examples: extended time, having test read to student)	0	1	2	3
Classroom accommodations (examples: second set of textbooks, extra time to get to class)	0	1	2	3
Medical services	0	1	2	3
Special transportation	0	1	2	3
Assistive technology or adaptive devices	0	1	2	3
Special education services	0	1	2	3
Related services	0	1	2	3
Other (<i>please specify</i>)	0	1	2	3

13. What is the per-pupil expenditure of your school?
Fill in amount _____

Part II. Training	
14. Does your division have a formal, written school board policy concerning Section 504?	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Don't know or unsure
15. Does your division have formal, written grievance and hearing procedures for Section 504 disputes?	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Don't know or unsure
16. Does your division have specific forms for Section 504 evaluations, eligibility and 504 plans?	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Don't know or unsure
17. Does your school division have a designated Section 504 Coordinator?	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Don't know or unsure
18. When was the last time training was conducted in your school concerning Section 504?	<input type="checkbox"/> This current academic year <input type="checkbox"/> Last academic year <input type="checkbox"/> 2 to 5 years ago <input type="checkbox"/> More than 5 years ago <input type="checkbox"/> Don't know (<i>please skip to question 22</i>)

19. Please identify the group(s) that received training during the most recent Section 504 training conducted in your school (*check all that apply*).

- Special educators
- General educators
- Guidance counselors
- Entire school
- Other (*please specify*) _____

20. How helpful was the most recent training?

- Very helpful
- Helpful
- Somewhat helpful
- Not at all helpful

21. Who provided the training?

- School division personnel
- Outside expert
- Other _____

22. How often does the evaluation team consider a student for 504 eligibility after finding child ineligible for an IEP under IDEA?

- Never
- Sometimes
- Always

23. May students on only Section 504 plans receive special education (instructional services) in your school?

- No
- Yes
- Don't know or unsure

24. May students on only Section 504 plans receive related services in your school?

- No
- Yes
- Don't know or unsure

25. Do you consider the student's eligibility for Section 504 with or without mitigating measures? Some examples of mitigating measures are glasses, a prosthesis and medication.

- With mitigating measures
- Without mitigating measures
- Don't know or unsure

26. To decide whether the student has a substantial limitation that would qualify the student under Section 504, what comparative frame of reference would you use?

- Student's potential educational performance compared to his/her current educational performance.
- Student's educational performance compared to an average student of same age and grade
- Don't know or unsure

27. Must the accommodations given to a student on a Section 504 plan be considered reasonable? In this case, "reasonable" means that the accommodation should not impose an undue hardship on the operation of a school or program.

- No
- Yes
- Don't know or unsure

28. What is the purpose of Section 504 as compared to the Individuals with Disabilities Education Improvement Act (IDEA)?

APPENDIX E

Letter to Section 504 Experts, Content Validation Instructions and Survey
Blueprint

Date

Dear Section 504 Experts

I am writing to follow up our recent correspondence regarding my dissertation at Old Dominion University on Section 504. I am delighted that you have agreed to evaluate the survey that I plan to use to acquire Section 504 data on Virginia's students. Your assistance will strengthen both the study and the results.

There are several enclosures in this mailing:

1. An introductory paper detailing the specific instructions for assessing the survey's validity.
2. The validity instrument, entitled "Survey Item Analysis"
3. The survey in its original form for survey respondents

The survey (item #3) contains items designed to assess division Section 504 coordinators and school-level Section 504 administrators' knowledge and training. The demographic information requested will help to provide an accurate picture of the use of Section 504 in Virginia. The purpose of obtaining your systematic review and that of the other experts is to ascertain the content validity of the survey.

Using the Survey Item Analysis (item #2), please rate each survey item in terms of content validity. Please make specific suggestions for any item that you rate with a 3 or less.

Thank you so much for your assistance in the final stages of the development of my survey. Please complete the Survey Item Analysis and return it in the envelope provided by date.

Gratefully,

Ann S. Maydosz
Doctoral Candidate
Old Dominion University

Enclosures (3)

Content Validation Instructions
Instructions for Evaluating Section 504 Administrators and Coordinators Surveys

Thank you for agreeing to evaluate these surveys. Your expertise will prove invaluable as the study is a large one and a poorly worded survey would not yield the data necessary to accurately study the prevalence and understanding of Section 504 in Virginia.

You will be rating the content validity of the two attached surveys. Mitchell and Jolley (2007) defined content validity as “The extent to which a measure represents a balanced and adequate sampling of relevant dimensions, knowledge, and skills. In many measures, participants are asked questions from a large body of knowledge. A test has content validity if its content is a fair sample of the larger body of knowledge” (p. 590).

In this case, I am asking two groups, the designated Section 504 Coordinators and the school level Section 504 administrators (this responsibility varies by school. In some schools, this person may be the principal or assistant principal, in others the guidance counselor, etc.) to provide data and share their knowledge about Section 504. The questions were derived from the current research and focus on the points of confusion among administrative school personnel about Section 504. You will see that I have primarily focused on knowledge of eligibility and implementation criteria rather than other issues like discipline.

Here are the research questions that my dissertation strives to answer:

Research question cluster 1: roles and guidelines. Who is responsible for 504 implementation and oversight in Virginia schools and divisions and what other roles does this person fill? How well do Virginia school Section 504 administrators and division Section 504 coordinators understand 504?

Research question cluster 2: training. What is the state of training in Virginia schools on the implementation of Section 504? To whom is training directed and how often is it given?

Research question cluster 3: data. How many students in Virginia have 504 plans? What are the ethnicities and genders of Section 504 students in Virginia? What impairments and major life activities are served for Section 504 students in Virginia? What are typical accommodations?

Research question cluster 4: Recent allegations. In what grades do most 504 plans occur in Virginia? Is there disproportionality in the use of 504 plans in Virginia? In Virginia, do wealthier school divisions implement more 504 plans?

Research question cluster 5: litigation. Does a review of Section 504 case law indicate conflicting decisions? (This question is not addressed by the surveys.)

After reviewing each item on each annotated survey, please circle the item below that best describes your evaluation of that item*.

1 = unacceptable 2 = partially acceptable 3 = acceptable 4 = good 5 = excellent

*Please provide suggested revisions for any item you rate with a 3 or less

Section 504 School-Based Administrator Survey Blueprint
(The school-based administrator is responsible for Section 504 implementation and oversight within a school—may be a principal, assistant principal, school counselor, etc.)

Research number: **XXXX**

Name of your school:

Part I: Demographics

1. What level or levels of instruction are provided in your building?
 - a. elementary
 - b. middle
 - c. high school
 - d. other (please specify) _____

Analysis of this item will provide information about the prevalence of 504 plans by school level. Holler and Zirkel (2008) proposed that Section 504 plans might be given disproportionately to high school students seeking accommodations for college entrance testing.

Content validity 1 2 3 4 5
Suggested revisions

2. What is your school role other than School-Based Section 504 Administrator?
 - a. Principal
 - b. Assistant principal
 - c. School counselor
 - d. General education teacher
 - e. Special education teacher
 - f. School psychologist
 - g. Other (please specify) _____

Madaus and Shaw (2008) found that a variety of administrators fill the role of school-level Section 504 administrator. Citing Katsiyannis and Conderman (2004), they posited that some confusion among school personnel may be the result of undefined roles and guidelines at the school level.

Content validity 1 2 3 4 5
Suggested revisions

The following questions will require specific knowledge about Section 504 students in your school. Please gather this information from authoritative, primary sources.

3. How many students in your school have 504 plans? Please enter number of students with only 504 plans.

Total number of students in school with 504 plans

(Enter **total number** of students with 504 plans in your school, not a percentage of the student population)

The President's Council on Excellence in Special Education (2003) faulted the Office for Civil Rights for failing to take data on the prevalence and outcome of Section 504 plans. This question will provide data on the prevalence of 504 plans in Virginia and allow correlational analyses with other items, e.g., school instructional level, per pupil expenditure, prevalence of IEPs.

Content validity 1 2 3 4 5
Suggested revisions

4. What is the ethnicity of your students with Section 504 plans? (Please enter total numbers of students with 504 plans in your school by ethnicities, not percentages, please.)

Black/Non Hispanic _____

White/ Non Hispanic _____

Hispanic _____

Asian/Pacific Islander _____

Native American/Alaskan _____

Native Hawaiian _____

Unspecified _____

There has been little research on ethnicity and Section 504 plans. Seese (2003) has proposed that better knowledge of Section 504 might assist schools struggling with claims of disproportional representation of minority students, but did not include it in her research. This item will also contribute to a better data definition of 504 students in Virginia.

Content validity 1 2 3 4 5

Suggested revisions _____ _____	
<p>5. How many students in your school have individualized education plans (IEPs)? Please enter students with only IEPs.</p> <p>Total number of students in school with IEPs _____ (Please enter total number of students with IEPs in your school, not a percentage of the student population.)</p> <p>This item will allow comparison with prevalence of 504 plans in the school.</p> <p>Content validity 1 2 3 4 5 Suggested revisions _____</p>	
<p>6. What is the ethnicity of your students with IEPs? (Please enter total numbers of students with IEPs in your school by ethnicities, not percentages, please.)</p> <p>Black/Non Hispanic _____</p> <p>White/ Non Hispanic _____</p> <p>Hispanic _____</p> <p>Asian/Pacific Islander _____</p> <p>Native American/Alaskan _____</p> <p>Native Hawaiian _____</p> <p>Unspecified _____</p> <p>There has been little research on ethnicity and Section 504 plans. Seese (2003) has proposed that better knowledge of Section 504 might assist schools struggling with claims of disproportional representation of minority students, but did not include it in her research. This item will also contribute to a better data definition of 504 students in Virginia.</p> <p>Content validity 1 2 3 4 5 Suggested revisions _____</p>	

7. Which impairments served are served with 504 plans in your school?
Please provide total numbers of students per impairment for **every** student served with a 504 plan in your school.
- a. ADHD _____
 - b. Diabetes _____
 - c. Peanut/tree nut allergy _____
 - d. Visual impairment _____
 - e. Hearing impairment _____
 - f. Dyslexia _____
 - g. Reading difficulties _____
 - h. Crohn's disease _____
 - i. Multiple sclerosis _____
 - j. Cerebral palsy _____
 - k. Epilepsy (seizure disorder) _____
 - l. Mental retardation _____
 - m. AIDS/HIV infection _____
 - n. Asthma _____
 - o. Learning disabilities _____
 - p. Arthritis _____
 - q. Heart disease/cardiac impairment _____
 - r. Chronic fatigue syndrome _____
 - s. Kidney disease _____
 - t. Hyperthyroidism _____
 - u. Social maladjustment _____
 - v. Depression _____
 - w. Drug/alcohol abuse _____
 - x. Eating disorders _____
 - y. Hemophilia _____
 - z. Posttraumatic stress disorder _____
 - aa. Physical/sexual abuse _____
 - bb. Sexually transmitted diseases _____
 - cc. Suicidal tendencies _____

- dd. Tourette syndrome _____
- ee. Oppositional defiant disorder _____
- ff. Conduct disorder _____
- gg. Emotional disturbance _____
- hh. Other (please specify) _____

Madaus and Shaw (2008) and Holler and Zirkel (2008) found that respondents were unclear about what impairments might be covered by Section 504. This item will allow data collection on impairments served in Virginia. The “other” response may provide additional information on knowledge of 504 coverage.

Content validity 1 2 3 4 5
Suggested revisions

8. Which major life activity has been limited for your Section 504 students? Please provide total numbers of students per major life activity for **every** student served with a 504 plan in your school.

- a. Learning _____
- b. Accessing learning _____
- c. Breathing _____
- d. Hearing _____
- e. Seeing _____
- f. Walking _____
- g. Speaking _____
- h. Working _____
- i. Performing manual tasks _____
- j. Sitting _____
- k. Reaching _____
- l. Stooping _____
- m. Other (please specify) _____

Respondents to a national survey on Section 504 students confused *major life activity* with *impairment* on the survey, reporting impairments (78.1%) rather than major life activities under the *other* category of an item requesting the major life activities of their Section 504 students (Holler & Zirkel, 2008).

Content validity 1 2 3 4 5
Suggested revisions

Part II. Training

9. Does your district have a formal, written Section 504 District policy?
- a. Yes

- b. No
- c. Don't know or unsure

Brady (2004) and Madaus and Shaw (2008) suggested that school divisions have not been adequately or recently trained on Section 504 implementation. Knowledge of official policy will establish a baseline for following questions.

Content validity 1 2 3 4 5
Suggested revisions

10. Does your school division have designated Section 504 Coordinator?

- a. Yes
- b. No
- c. Don't know or unsure

Brady (2004) and Madaus and Shaw (2008) suggested that school divisions have not been adequately or recently trained on Section 504 implementation. Knowledge of official oversight will establish a baseline for following questions.

Content validity 1 2 3 4 5

Suggested revisions

11. When was the last time that your school received training on Section 504?

- a. This current academic year
- b. Last academic year
- c. 2 to 5 years ago
- d. More than 5 years ago
- e. Training has never been provided to this school

Madaus and Shaw (2008) surveyed 259 school professionals to find when they had last received inservice training on Section 504, 28% responded *never*; 16% responded that they'd received training in the *current year*; 21% reported receiving training *last year*; 29% had received training *two to five years ago*; and 7 % had received training *more than five years ago*.

Content validity 1 2 3 4 5

Suggested revisions

12. If a student is not eligible for services under IDEA, could the student be eligible for services under Section 504?

- a. Yes
- b. No
- c. Don't know/unsure

In *N.L. v. Knox County Schools* (2003) the court (citing *Smith v. Robinson*, 1984) stated, "The disabled child is ineligible for placement under IDEA, also ineligible under 504. District court relied upon erroneous conclusion that IDEA & 504 have significant differences," while Richards (n.d.) cited the decision in Anaheim (CA) Union High School District, in which the court plainly stated that a student could be considered disabled under Section 504 even though the student would not be eligible for services under IDEA.

Content validity 1 2 3 4 5
Suggested revisions

13. Is special education available to students on 504 plans?

- a. Yes
- b. No
- c. Don't know/unsure

Heufner (2006) stated, "The primary difference between IDEA students and 504-only students is that the former require special education and the latter require only general education and modifications..." (p. 69) while deBettencourt (2002) advised, "Contrary to popular belief, Section 504 is not limited to general education based services or modifications of general education programs" (p. 21).

Content validity 1 2 3 4 5
Suggested revisions

14. Do you consider the student's eligibility with or without mitigating measures?

- a. With mitigating measures
- b. Without mitigating measures
- c. Don't know/unsure

Unfortunately, not all practitioners have been informed about mitigating measures. Recent advocate and teacher guides on Section 504 omitted information and explanations of mitigating measures (see Brady, 2004; Smith, 2002). Holler and Zirkel (2008) found that slightly more than half (54.3%) of the 594 principals who responded to their national survey understood that mitigating measures have to be taken into account when determining eligibility for Section 504.

Content validity 1 2 3 4 5
Suggested revisions

15. To decide whether the student has a substantial limitation that would entitle the student to 504 coverage, what would you consider?

- a. Child's potential performance
- b. Child's performance compared to an average student of same age and grade ("average person in general population")
- c. Don't know/ unsure

School divisions may be unaware of this standard. In a national survey of Section 504 prevalence and procedures, Holler and Zirkel (2008) found that only 6.7% of the 549 respondent principals selected the correct frame of reference to which a student seeking eligibility was to be compared.

Content validity 1 2 3 4 5
Suggested revisions

16. Are related services available to students on 504 plans?

- a. Yes
- b. No
- c. Don't know/unsure

As Section 504 includes the “provision of regular or special education and related aids and services” (§104.33), it seems that the intended plan for the eligible student could include regular education, special education and/or related aids and services (CASE, 2006; Smith, 2002; Yell, 2006). However, as is often done with broad federal mandates, the final decision rests with state and local agencies. Have Virginia school divisions been informed as to related services and students with 504 plans?

Content validity 1 2 3 4 5

Suggested revisions

17. Must the accommodations given to a student on a 504 plan be considered reasonable? (“would [not] impose an undue hardship on the operation of its program” (§104.12))

- a. Yes
- b. No
- c. Don't know/unsure

Professionals have upheld the reasonable accommodation standard in practitioner literature (Heyward, 1992; LaMorte, 2008; Latham, Latham & Mandalawitz, 2008; Yell, 2006).

However, when Dr. Perry A. Zirkel (1993) wrote to OCR for an interpretation of the reasonable accommodation standard as applied to students, he received an “unequivocal no” in answer.

Content validity 1 2 3 4 5

Suggested revisions

18. How often does the child study team consider a student for 504 eligibility after finding child ineligible for IDEA?

- a. Always
- b. Frequently
- c. Occasionally
- d. Never

CASE (2006) has proposed that the following conditions should occasion a Section 504 referral: “referral to IDEA, but no suspect disability” and “ineligibility under IDEA after evaluation,” but how often is this done in actual practice?

Content validity 1 2 3 4 5

Suggested revisions

APPENDIX F

Response Rate Analyses

Table F1

Response Rate Analysis for School Administrators

Population	Division Gave Permission	Division Gave No Answer	Division Denied Permission	Response Rate
2020	172	111	40	15.99%
577*	172	111	40	55.98%
577*	172	111		49.05%
577*	172			29.81%

*Note. 577 is the total number of schools for which permission to circulate the survey was given by the central office or some other authority. There are 2020 principal positions listed in the VDOE Education Directory.

Table F2

Response Rate Analysis for Division Coordinators

Population	Division Gave Permission	Division Gave No Answer	Division Denied Permission	Response Rate
132	22	12	0	25.76%
58*	22	12	0	58.62%
58*	22			37.93%

*Note. 58 is the total number of divisions for which permission to circulate the survey was given by the central office or some other authority. There are 132 school divisions in Virginia.

Curriculum Vitae

Ann Stafford Maydosz

Business Address: 116 Child Study Center
 Old Dominion University, Norfolk, VA 23529
 (757) 683-5372 e-mail: amaydosz@odu.edu

Education:

ABD	PHD	Old Dominion University; Norfolk, VA; Special Education concentration
2000	MSED	Darden College of Education at Old Dominion University; Norfolk, VA; Special Education with emphasis in Early Childhood Special Education
1998	BS	College of Arts and Letters at Old Dominion University; Norfolk, VA; Interdisciplinary Studies with concentration in Teacher Preparation; Summa Cum Laude

Experience:*Academic Experience*

2004 - Present	Adjunct Instructor; Special Education Program; Old Dominion University
	<ul style="list-style-type: none"> • Courses taught: <i>Legal Aspects and Characteristics in Special Education; Language Acquisition and Reading for Students with Diverse Learning Needs.</i> • Delivered instruction through virtual, Teletechnet (distance learning), web-based and face-to-face mediums. • Average class size: 110 students

Nonacademic experience

2000 – present	Program Coordinator; The Commonwealth Special Education Endorsement Programs; Old Dominion University
2007 -- present	Program Coordinator, ODU; Visual Impairment Consortium with George Mason University, James Madison University, University

of Virginia, Radford University & Virginia Commonwealth University.

- 2007 – present Research Associate; Effective Schoolwide Discipline grant; Old Dominion University
- 1992--1995 Lead Teacher; Children's House of Galilee (Montessori), Virginia Beach, VA

Publications:

Journal Articles (Non-Refereed)

- Maydosz, A. (2000). A study in black and red: Ethnic humor in colonial America. *The Journal of Negro History*, 85(4), 300-307.
- Maydosz, A. (1998). Rewards are a rat trap. *Montessori Life*, 10(3), 37-39.

Papers Presented at Professional Meetings:

- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2009, July). *The Commonwealth Special Education Endorsement Programs: Successful retention of provisionally-licensed special educators*. International Association of Special Education, Alicante, Spain.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2009, April). *The Commonwealth Special Education Endorsement Programs: Successful retention of provisionally-licensed special educators*. 2009 Council for Exceptional Children Convention and Expo, Seattle, WA.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2008, November). *The Commonwealth Special Education Endorsement Programs: A successful distance-learning alternative licensure program*. Teacher Education Division of Council for Exceptional Children, Dallas, TX.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., Maydosz, A. & Hughes, K. (2007). *The Commonwealth Special Education Endorsement Programs: Distance learning alternative licensure through a collaboration of agencies*. Paper presented at the 59th Annual Meeting, American Association of Colleges of Teacher Education, New York, NY, February 12, 2007.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., Maydosz, A. & Hughes, K. (2006). *The Commonwealth Special Education Endorsement Programs: Alternative licensure through distance education*. Paper presented at the 29th Annual Teacher Education

Division /2nd Annual Technology and Media Division Conference (Council for Exceptional Children), San Diego, CA, November 8, 2006.

Tonelson, S., Hager, J., Baker, C., Gable, R.A., Maydosz, A. & Hughes, K. (2006). *The Commonwealth Special Education Endorsement Program: Induction Year Mentoring and Tuition Support*. Paper presented at the 2006 Council for Exceptional Children Convention and Expo, Salt Lake City, UT, April 10, 2006.

Tonelson, S., Hager, J., Baker, C., Gable, R.A., Maydosz, A. & Hughes, K. (2006). *The Commonwealth Special Education Endorsement Program: A distance learning approach*. Paper presented at the Annual Conference of the National Center for Alternative Certification, San Diego, CA, February 7, 2006.

Tonelson, S., Hager, J., Baker, C., Gable, R.A., Maydosz, A. & Hughes, K. (2005). *The Commonwealth Special Education Endorsement Program*. Paper presented at the Research Conference on Teacher Education, The Center for Research, Evaluation & Advancement of Teacher Education, San Antonio, Texas, September 12, 2005.

Tonelson, S., Hager, J., Baker, C., Gable, R.A., Maydosz, A. & Hughes, K. (2005). *Reducing the Shortage of Special Educators: A Distance Learning Approach*. Paper presented at the Ninth Biennial International Conference, International Association of Special Education, Halifax, Nova Scotia, July 12, 2005.

Tonelson, S., Hager, J., Baker, C., Gable, R.A., Maydosz, A. & Hughes, K. (2005). *A distance learning approach to reducing shortages in special education personnel*. Paper presented at the 77th Annual Conference of the National Association of State Directors of Teacher Education and Certification, San Antonio, TX, June 7, 2005.

Tonelson, S., Hager, J., Baker, C., Gable, R.A., Maydosz, A. & Hughes, K. (2005). *The Commonwealth Special Education Endorsement Program: A distance learning approach to alternative certification*. Paper presented at the Annual Conference of the National Center for Alternative Certification, Lake Buena Vista, FL, February 11, 2005.

Maydosz, A. (1998). *Melungeons: Life on the Border*. Paper presented at the Annual Conference of the Virginia Social Science Association, Bridgewater, VA, October 15, 1998.

Awards Given to CSEEP:

Most Collaborative Grant Award, Darden College of Education, Old Dominion University. August, 2007.

Finalist, Distinguished Program in Teacher Education, Association of Teacher Educators, February, 2007.

Exemplary Program Award, American Council on Rural Special Education, March, 2006.

The Christa McAuliffe Award for Teaching Excellence, American Association of State Colleges and Universities, September 2005.

Most Collaborative Grant Award, Darden College of Education, Old Dominion University. August, 2003.

Grants:

The Virginia Consortium for Teacher Preparation in Vision Impairment. (October, 2008). (Contributor: Maydosz, A.), Funded: \$20,996.00.

The Commonwealth Special Education Endorsement Programs. (November, 2007). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$456,948.00.

The Virginia Consortium for Teacher Preparation in Vision Impairment. (October, 2007). (Contributor: Maydosz, A.), Funded: \$21,001.00.

The Commonwealth Special Education Endorsement Programs. (November, 2007). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$1,004,000.

The Commonwealth Special Education Endorsement Programs. (November, 2006). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$1,004,000.

The Commonwealth Special Education Endorsement Program, Paraprofessional Preparation for Extraordinary Teaching, and A Commonwealth Collaborative Endorsement for Special Education Studies. (September, 2005). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$731,665.

The Commonwealth Special Education Endorsement Program, Paraprofessional Preparation for Extraordinary Teaching, and A Commonwealth Collaborative Endorsement for Special Education Studies. (July, 2005). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$193,338.

Paraprofessional Preparation for Extraordinary Teaching. (2004, December). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$70,000.

The Commonwealth Special Education Endorsement Program. (2004). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$625,000.

Paraprofessional Preparation for Extraordinary Teaching. (2004, February). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$70,000.

The Commonwealth Special Education Endorsement Program. (2003, November). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), \$25,000.

The Commonwealth Special Education Endorsement Program. (2003, August). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$650,000.

Paraprofessional Preparation for Extraordinary Teaching. (2003). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$65,000.

The Commonwealth Special Education Endorsement Program. (2002). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$1,150,000.

The Commonwealth Special Education Endorsement Program. (2001). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$599,867.

The Commonwealth Special Education Endorsement Program. (2000). The Virginia Department of Education, Principal Investigators: Tonelson, S., Hager, J., Baker, C., & Gable, R.A., (Contributor: Maydosz, A.), Funded: \$900,000.

Honors and Awards:

2009 *Kimberly Gail Hughes Research Award*

1998 *College of Arts and Letters Outstanding Scholar*, Old Dominion University

1998 Old Dominion University Alumni Association Scholarship Recipient

Workshops and Training:

Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2007). *The Commonwealth Special Education Endorsement Program: A distance learning approach*. Virginia Department of Education: The Great Virginia Teach-In, Richmond, VA, March 16, 2007.

- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2006). *The Commonwealth Special Education Endorsement Program: A distance learning approach*. Virginia Department of Education: Institutions of Higher Education Special Education Meeting, Richmond, VA, November 20-21, 2006.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2006). *The Commonwealth Special Education Endorsement Program: A distance learning approach*. Loudoun County Public Schools: Professional Development Conference, Sterling, VA, August 30, 2006.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2006). *The Commonwealth Special Education Endorsement Program: A distance learning approach*. Virginia Department of Education: The Great Virginia Teach-In, Richmond, VA, March 15, 2006.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2005). *The Commonwealth Special Education Endorsement Program: A distance learning approach*. Virginia Department of Education: The Great Virginia Teach-In, Richmond, VA, March 16, 2005.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2004). *The Commonwealth Special Education Endorsement Program: A distance learning approach*. Virginia Department of Education: Institutions of Higher Education Summit, Richmond, VA, July 15, 2004.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2003). *The Commonwealth Special Education Endorsement Program: A distance learning approach*. Virginia Department of Education: VDOE Forum for Deans and Directors of Special Education, Richmond, VA, July 14, 2003.
- Tonelson, S., Hager, J., Baker, C., Gable, R.A., & Maydosz, A. (2002). *The Commonwealth Special Education Endorsement Program*. Virginia School Superintendents' Regional Meeting, Virginia Beach, VA, November, 11, 2002.

Certification and Licensure:

2001 Early Childhood Special Education Postgraduate Professional license, Virginia Department of Education

2001 Early Childhood Credential, American Montessori Society

Professional Memberships:

American Educational Research Association

Council for Exceptional Children

American Montessori Society

University Service:

2007 Created asynchronous (online) version of ESSE 400/500 *Legal Aspects and Characteristics of Special Education*

2007 Revised ESSE 415/515 to meet licensure and professional standards

2004 Poster presented at Old Dominion University Research Day, March 23, 2004, Norfolk, VA.

2003 Associate Advisor, Student Council for Exceptional Children, Old Dominion University chapter.