3.1. Section 504 of the Rehabilitation Act of 1973

Section 504 is a civil rights law passed by Congress in order to eliminate discrimination against handicapped persons in any program receiving federal financial assistance. Unlike the Education for All Handicapped Children Act, which is a grant-in-aid program for funding special education programs, 504 covers discrimination in a wide range of national activities, including employment, transportation, and education. The basic purpose of this law is to eliminate traditional societal bias toward disabled persons and to assist them in becoming integrated with others who are not handicapped. It allows for equal access to jobs and educational programs when a person who can otherwise participate in the activity is qualified to do so. In short, it is illegal to refuse a benefit to a handicapped person who is qualified by reason of training, education, and other factors solely because of the person’s disability.

When dealing with discrimination in education, 504 and 94-142 must be read together. The goals of these two laws are essentially the same in elementary and secondary programs: they both require the provision of a free appropriate public education. Likewise, 504 prohibits discrimination in higher and post-secondary education.

Section 504 is one of the most succinct statements of equal rights available under federal or state law. It provides that “no otherwise qualified handicapped individual in the United States... shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” In 1977 the Department of Health, Education and Welfare promulgated implementing regulations that cover discrimination in all education programs receiving federal aid, as well as in a number of other areas.

For the purpose of vindicating the rights of handicapped persons, those
persons included in the protection of this law are much more broadly defined than they might be under P.L. 94-142. To be covered an individual must fall within the definition of a “qualified, handicapped person,” that is, “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.” It is easy to see how this definition goes beyond the one given in the Education for All Handicapped Children Act. To be covered by P.L. 94-142, a handicapped person must also require special education and related services. As a result of 504’s definition, the impairment must limit a major life activity, there must be a history of the impairment, and, interestingly, an individual may be defined as handicapped if he is regarded as having an impairment. Therefore a situation can and sometimes does arise where a handicapped person may not require special education and related services, but could receive an education not because he is covered by the protections of 94-142 but because he is covered by 504. For example, in certain cases, particularly where a student has been misclassified or is thought to have a particular disability, that person could not be discriminated against under 504 even though he might not, in fact, have such a disability. This distinction is very important, and helpful for handicapped persons wishing to participate in all aspects of federally funded education program. Thus both laws must be examined carefully to see if the benefits not covered by one may in any event be obtained from the other.

The law defines a physical or mental impairment in a manner that may go beyond 94-142’s coverage:

(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.

It is apparent that virtually any physical or mental impairment is covered by law. Again, note that exceptional children classified as gifted are, as in the case of 94-142, not covered by this law.

The major life activities that must be limited include “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.”

Central to the law’s functioning is the requirement that school officials, among others, must take affirmative action to remedy discriminatory policies existing before the law was passed and that may still exist, and to provide such things as program access for handicapped persons when not currently available. Schools at all levels must build ramps and provide other aids and services that