

A COMPARATIVE STUDY OF SECTION 504 OF THE UNITED STATES'
REHABILITATION ACT OF 1973 AND THE LAW OF THE PEOPLE'S REPUBLIC OF
CHINA ON THE PROTECTION OF DISABLED PERSONS

by

HUAYIN LIU

(Under the Direction of JOHN DAYTON)

ABSTRACT

This study employs legal research methodology. Research includes an extensive search for relevant sources on the Section 504 of the United States' Rehabilitation Act of 1973 and the Law of the People's Republic of China on the Protection of Disabled Persons, including federal legislation, regulations, case laws, and other documents. The resulting documents are reviewed, analyzed, synthesized to construct an accurate historical perspective on these two laws. The study found that the letter of the Chinese law seems to address more issues than the U.S. law but the U.S. law provides broader protection than the Chinese law. The U.S. law serves its purpose: to include people with disabilities into the society in which they live. The Chinese law fails to do so because it lacks clearly defined term of discrimination, lacks accessibility & accommodation mandates, as well as effective enforcement mechanisms and independent judicial system. Recommendations for Chinese lawmakers are provided.

INDEX WORDS: Section 504, Chinese disability law,

A COMPARATIVE STUDY OF SECTION 504 OF THE UNITED STATES'
REHABILITATION ACT OF 1973 AND THE LAW OF THE PEOPLE'S REPUBLIC OF
CHINA ON THE PROTECTION OF DISABLED PERSONS

by

HUAYIN LIU

BACHELOR OF ARTS, JIANGXI UNIVERSITY, P. R. CHINA, 1989

MASTER OF EDUCATION, CLEMSON UNIVERSITY, 1994

A Dissertation Submitted to the Graduate Faculty of The University of Georgia in Partial

Fulfillment of the Requirements for the Degree

DOCTOR OF EDUCATION

ATHENS, GEORGIA

2005

© 2005

Huayin Liu

All Rights Reserved

A COMPARATIVE STUDY OF SECTION 504 OF THE UNITED STATES'
REHABILITATION ACT OF 1973 AND THE LAW OF THE PEOPLE'S REPUBLIC OF
CHINA ON THE PROTECTION OF DISABLED PERSONS

by

HUAYIN LIU

Major Professor: John Dayton

Committee: Thomas Holmes
Ken Tanner

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
The University of Georgia
December 2005

DEDICATION

To all those influenced me one way or another along my academic study, I want them to know my appreciation here.

ACKNOWLEDGEMENTS

Grateful acknowledgement is made to the following individuals:

My major professor and advisory committee members, Dr. Dayton, Dr. Holmes, and Dr. Tanner, for their encouragement, support and guidance.

Ms. Melinda Pass, degree program specialist, for her detailed and patient help.

TABLE OF CONTENTS

| | Page |
|--|------|
| ACKNOWLEDGEMENTS | v |
| LIST OF TABLES..... | viii |
| CHAPTER | |
| I INTRODUCTION | 1 |
| Problem Statement | 1 |
| Research Questions | 2 |
| Procedures | 2 |
| Limitations of the Study | 3 |
| II REVIEW OF THE LITERATURE | 4 |
| Summary of Scholarly Literature | 4 |
| 29 U. S. C. § 794 | 4 |
| Law of the People’s Republic of China on the Protection of Disabled Persons | 37 |
| III COMPARISON AND CONTRAST: ANALYSIS OF THE U.S. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE LAW OF THE PEOPLE’S REPUBLIC OF CHINA ON THE PROTECTION OF DISABLED PERSONS ... | 40 |
| IV FINDINGS AND RECOMMENDATIONS | 49 |
| REFERENCES | 52 |
| APPENDICES | 55 |
| A SECTION 504 IN ENGLISH | 55 |

| | | |
|----|------------------------------|----|
| B | CHINESE LAW IN ENGLISH | 59 |
| C | SECTION 504 IN CHINESE..... | 81 |
| D. | CHINESE LAW IN CHINESE | 84 |

LIST OF TABLES

| | Page |
|--------------------------------|------|
| TABLE 1. COMPARISON TABLE..... | 48 |

CHAPTER I

INTRODUCTION

Problem Statement

No otherwise qualified handicapped person in the United States...shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. (29 U.S.C. § 794)

This famous quotation from Section 504 of the Rehabilitation Act of 1973 is probably the most important statement ever made regarding the rights of people with disabilities. Title VI of the Civil Rights Act of 1964, which prohibits racial discrimination, and Title IX of the Education Amendments of 1972, which prohibits sex discrimination, served as models for the language of Section 504. Section 504 of the Rehabilitation Act of 1973 opened up another front for ending discrimination based on disability. It was the first civil rights legislation designed to protect individuals with disabilities from discrimination based on their disability status. The nondiscrimination requirements of the law apply to areas of employment, access to facilities, public transportation, education, and other social services. Regulations contained in the Act specified that all recipients of federal funds including employers and educational institutions were required to make “reasonable accommodations” for individuals with disabilities (45 C.F.R. 1997).

About 18 years later, in December 1990, near the end of the “ United Nations Decade of Disabled Persons ” (1983-1992), on another side of the world, the People’s Republic of China passed precedent-setting legislation, the Law of the People’s Republic of China on the

Protection of Disabled Persons. The purpose of the law is “protecting the lawful rights and interests of, and developing undertakings for, disabled persons, and ensuring their equal and full participation in social life and their share of the material and cultural wealth of society.” (Article 1, P.R.C. Law). It is the most comprehensive piece of legislation protecting the rights to equality and participation of people with disabilities in China.

Research Questions

This study examines these two laws separately, then compared and contrasts them by investigating the following research questions:

1. What are the differences and similarities between 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973) and its Chinese counterpart, the Law of the People’s Republic China on the Protection of Disabled Persons?
2. Based on comparison and contrast analysis of the two laws, what suggestions and recommendations can be provided to Chinese officials regarding future revisions or amendments to the Chinese law?

Procedures

This study employs legal research methodology. Research includes an extensive search for relevant sources on the laws, including federal legislation, regulations, case laws, and other documents using the University of Georgia’s library, Lexis-Nexis, Google and Findlaw, Westlaw, people.com.cn, and xinhuanet.com. The resulting documents are reviewed, analyzed, and synthesized to construct an accurate historical perspective on these two laws. Newspapers were an additional source of information on the Chinese law.

With cases arranged in categorical order, the literature review provides an accurate depiction of different aspects of Section 504 of Rehabilitation Act of 1973. It includes relevant federal statutes, such as Section 504 of the Rehabilitation Act of 1973 and the regulations published in 1977 as well as relevant Supreme Court and appellate court decisions. Chapter III analyzes and contrasts the laws of the United States and China. Chapter IV provides a summary of findings and recommendations for Chinese lawmakers for future revisions and amendments.

Limitations of the Study

The intention of this study is to compare and contrast the Section 504 of the Rehabilitation Act of 1973 and the Law of the People's Republic of China on the Protection of Disabled Persons. It does not involve other U.S. legislation regarding people with disabilities besides Section 504 of the Rehabilitation Act of 1973.

CHAPTER II

REVIEW OF THE LITERATURE

Summary of Scholarly Literature

There has been very little written about the comparison between Section 504 of the U.S. Rehabilitation Act of 1973 and the Law of the People's Republic of China on the Protection of Disabled Persons. In 2001, the United Nations commissioned a report, written by John Wilde, on this subject, which offered valuable information and resources centering around thirty-four questions from a Chinese information handbook.

The current study uses a large number of legal cases available under the law, examines the two laws, and provides a more focused analysis of the two laws mentioned above.

This chapter first presents the development of Section 504 of Rehabilitation Act of 1973 and litigations shaping its expansion and enforcement. Then the chapter turns to the Law of Peoples Republic of China on the Protection of Disabled Persons (1990). At this point, thorough research has not turned up any litigation under this law in China.

29 U.S.C. § 794

(Section 504 of the Rehabilitation Act of 1973)

The Civil Rights Acts of 1964 legally ended discrimination based on sex, race, religion, and national origin (Civil Right Acts, 1964). The Acts did not address people with disabilities. After public hearings featuring the testimony of disabled persons, their families,

interest groups, and experts, both the Senate and the House of Representatives issued findings in 1973. These findings concluded that disabled people were not only excluded from the benefits of public facilities, programs, and education but were also persistently excluded from job opportunities for which they were qualified. They were excluded merely because potential employers, including state and federal agencies, did not have any incentive to make reasonable accommodations to facilitate the performance of their jobs or to provide access to work, school, and commercial facilities.

In the educational setting, children with disabilities were first given protection under the United States Constitution and civil rights laws to challenge the traditional practice of educating the disabled in segregated settings (separate but equal). Creating specific educational rights and rights of inclusion for the disabled facilitated mainstreaming (attendance at regular public schools and classes) through court action under constitutional theories. In *Pennsylvania Assoc. for Retarded Citizens v. Pennsylvania*, 343 F. Supp. 279 (Pa. 1972), the trial court found that mentally retarded children, between the ages of six and twenty-one were entitled to access free public education. Furthermore, the trial court ruled that these children should be educated in regular classes whenever possible and in special classes only when necessary. In *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.C. 1972), the court held that all children with disabilities are entitled to free and adequate education.

Section 504 arose out of the need for legislation to reinforce the court rulings in *Pennsylvania Association for Retarded Citizens (PARC)* and *Mills*, to provide a uniform inclusion of the disabled throughout American society, and to address the identified needs of the disabled. The Senate, in its report (No. 93-318) and the House Conference Report

(reported in the 1973 U.S. Code and Congressional News, p. 2076) both recommended legislative action to mandate the provision of rehabilitation services for the disabled for work for which they can become qualified. These also mandated that

1. federal, state, and private agencies provide opportunities for the disabled by making reasonable accommodations for disabled people's participation
2. federal and state agencies develop and implement plans to include the disabled in all federal agencies and programs

Furthermore, the new law provided a strong mandate for federal, state, profit, and non-profit organizations to comply with the federal mandate to provide services, to hire, and to promote disabled people. The device Congress used to implement Section 504 is the acceptance of federal funds for programs available to the general public on the condition that state, federal, and other agencies agree to the principles set forth in Section 504. In essence, that the handicapped shall not be wrongfully excluded from those programs for which the state, federal, and non-profit organizations receive federal funding, including health, education, and welfare programs.

The findings of both Houses of Congress combined into the law's statutory justification for federal action in the law itself. These justifications include:

1. the persistent failure to include the disabled in American society
2. the severe segregation of disabled minorities
3. the need for special attention and promulgation of programs directed toward them, especially minorities
4. the need for a federal impetus to include the disabled in American life to the extent possible

To effectuate this new federal mandate, Section 504 of the Act was instituted to enforce compliance by conditioning federal funding on the inclusion of services for the disabled, issuance of notice to disabled persons of their eligibility for inclusion into programs, and the institution of rules geared toward not only enforcing the law but also systematically ensuring that every effort is made to provide the disabled with the opportunity to participate fully in and receive the benefits of state, federal, and private agencies (assurance).

However, in the educational setting, Congress found that children with disabilities were still systematically segregated from regular classrooms and schools, were deprived of appropriate education, and in some cases were deprived of all education (in situations where their parents could not pay the tuition for private programs) in 1975. Therefore, the passage of the Education for All Handicapped Children Act provided for the inclusion of disabled children in public schools (mainstreaming) and the preparation of these children for independent living. After free appropriate public education was mandated, the combined effect with Section 504 provided the enforcement, structure, and requirements for educating children with disabilities and accommodating their disabilities in order to provide access to the most appropriate education possible at public expense.

1. Constitutional Bases for Congressional Spending Power

In enacting Section 504, Congress adopted the use of its spending power to enforce newly enacted rights of disabled persons under the Commerce Clause of the United States Constitution, Article I, Section 8. Using this power, Congress merely had to identify a social need that justifies federal action and then condition federal funds and grants upon an agency's compliance with its legislation whether that agency is federal, state, or private. In

Pennhurst State School & Hospital v. Halderman, the United States Supreme Court found that the federal government can control the action of state governments, institutions, and agencies through the use of its spending power because legislation “enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions” 451 U.S. 1 (1981). Thus, the federal government could control the delivery of state services to institutionalized mentally retarded individuals. The Court in *Pennhurst* stated that the only requirement for the legitimacy of exercise of federal spending power is an unambiguous notice to the state of federal requirements and the voluntary acceptance of those requirements through acceptance of federal funds with the knowledge that there are conditions attached to them.

However, the Supreme Court has stated several times that the conditions on federal funding or the exercise of the spending power must be in pursuit of the general welfare, a requirement set out in *United States v. Butler*, 297 U.S. 1 (1936). This requirement was cited by Justice Cardozo in *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937), in his argument that social welfare limitations on funding were appropriate and legitimate because they allow the states, the federal government, and businesses to work toward a common end without fear of becoming noncompetitive in providing social programs (such as Social Security and unemployment compensation) when other states or businesses would otherwise refuse to do so and enjoy a cost-savings.

Today, the only requirements for the exercise of spending power are a rational relation to an identified social problem and the unambiguous notice to the states of the condition on the federal funds. In *South Dakota v. Dole*, 483 U.S. 203 (1987), Chief Justice Rehnquist upheld the withholding of federal highway funds from states that refused to raise the drinking age

and discussed the spending power of Congress. The spending power, of course, is subject to several general restrictions. It must be in pursuit of the general welfare. First, courts should defer substantially to the judgment of Congress when considering whether or not a particular expenditure serves a general public purpose. Second, if Congress desires to condition the state's receipt of federal funds, it must do so unambiguously. Third, these cases have suggested that conditions on federal grants might be illegitimate if they are unrelated to the federal interest in particular national projects or programs." To Rehnquist, there is a rational relation to public highway funds because the problem of drinking and driving has a rational relation to safe interstate travel, for which the federal government provides funds to the states for the benefit of all citizens. As long as Congress states the public interest to be served by a law (makes a finding of fact in the legislation or in the *congressional record*), gives unambiguous notice to the states about funding conditions, and ensures that funding restrictions have some rational relation to the public interest to be served, then the exercise of federal spending power to control the actions of states and private agencies receiving federal funds is legitimate.

Most important, the Supreme Court has strongly asserted that courts should not second-guess congressional findings or identification of social welfare needs, leaving wide discretion to Congress to identify problems and design programs to ameliorate them. Thus, Congress, relying on Supreme Court precedent that dates back to the legal battles of New Deal social welfare legislation, can address the needs of disabled persons through the power of federal funds as Section 504 (a) states: "No otherwise qualified individual with a disability in the United States, as defined in section 706(20) of this title, shall, solely by reason of his or her

disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

In essence, if a federal, state, or privately owned agency uses federal funds to provide a service to the general public, that agency must also provide disabled persons with the opportunity to benefit from those services and participate in the delivery of those services (be employed by that agency) as well.

2. 29 U.S.C. § 794

The entities governed by Section 504 are set out in 29 U.S.C. 794(b). They include:

1. a department, agency, special purpose district, or other instrumentality of a state or local government
2. an entity of such state or local government that distributes such assistance and each such department or agency to which the assistance is extended (in the case of assistance to a state or local government)
3. a college, university, or other postsecondary institution or a public system of higher education
4. a local educational agency, system of vocational education, or other school system
5. an entire corporation, or an entire sole partnership if (federal assistance) is extended to such corporation, partnership, private organization, or sole partnership as a whole, or which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation

6. 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
7. any other entity which is established by two or more entities described above if any one of these entities receives federal financial assistance.

In this way, Congress mandates the included participation (employment) and included service delivery of all education, health, and social welfare programs delivered to the general public with the use of federal funds.

While the impact of this mandate is great and permeates every level of service delivery, Section 504 does not obligate businesses and contractors who indirectly receive federal funds, for example, by doing business with school systems or hospitals. In *Rogers v. Frito Lay, Inc.*, 433 F. Supp. 200 (N.D. Tex, 1977), a government contractor was not liable under §§ 503 and 504 of the Rehabilitation Act of 1973 by allegedly violating the Act in terminating a disabled woman's employment. The court stated that financial "assistance under §504 did not comprehend government procurement contracts. The statute only applies directly to the entities directly receiving funds dedicated to programs and services deemed to be in the public good. As a result, Section 504 limits enforcement mainly to federal, state, and non-profit agencies that receive direct funding for their social welfare programs.

3. Elements of Section 504

Otherwise Qualified

While only those organizations and agencies receiving federal funds are required to include the disabled, the Act defines the individuals who must be included by these agencies. The disabled persons protected by the Rehabilitation Act of 1973 are those individuals who would be qualified for employment or for the delivery of service as long as reasonable accommodations are made to include them. In the employment context, the individual must be qualified for the job or program. For instance, a paraplegic social worker with appropriate licensing and education is otherwise qualified for a job with a state welfare department. Therefore, the department must provide wheelchair access as reasonable accommodation for that individual. Furthermore, the cost of installing wheelchair access does not justify the failure to hire an individual.

A handicapped individual who cannot perform essential job duties is not under Rehabilitation Act protection. In *Chiari v. City of League City*, 920 F.2d 311 (5th Cir.1991), a person with Parkinson's disease, failed in his lawsuit against a Texas municipality because he could not perform his job without causing danger to others or himself. In *Pesterfield v. Tennessee Valley Authority*, 941 F.2d 437 (6th Cir.1991), a mentally disabled tool room attendant was a handicapped person under the Act, but was not "otherwise qualified" because he became extremely anxious and depressed by normal job stress. On the other hand, in *Carter v. Casa Cent.*, 849 F.2d 1048 (7th Cir. 1988), a nursing director was denied reemployment after she was diagnosed with multiple sclerosis. The court found that she had been denied the job solely because of her handicap, where she was "otherwise qualified" for the job and posed no health risk.

However, the courts have had to define an otherwise qualified individual on a case-by-case basis, especially in the employment and education arenas. In *Kampmeier v. Nyquist*, 553 F. 2d 296 (2d Cir. 1977), the California Court of Appeals ruled that the two junior high school students who suffered from eye defects were not otherwise qualified for contact sports and therefore were rightfully excluded from school teams (based on expert medical testimony at the trial). However, medical illness or defects should not serve to discriminate unreasonably. In *Duran v. Tampa*, 430 F. Supp. 75 (M.D. Fla. 1977), an applicant for a position with the city's police department, having all of the job's education and training requirements, was otherwise qualified for the job in spite of a history of childhood epilepsy because the job applicant had not had a seizure in sixteen years and was not on seizure medication for nine years prior to applying for employment with the city. The city violated the Rehabilitation Act of 1973 by presuming that the applicant was unfit for police work on the basis of his medical history and refusing the applicant a physical examination.

Nevertheless, school systems cannot be paternalistic in determining who is an otherwise handicapped individual under Section 504. Absent unequivocal medical evidence, a school cannot override the judgment of a student or his/her parents in deciding that the risk of a certain activity is too substantial in light of the student's medical history. In *Grube v. Bethel School District*, 550 F. Supp. 418 (E. D. Pa. 1982) the school system violated Section 504 in prohibiting a student with one kidney, who had already been selected for the football team (otherwise qualified for football) from playing the sport because they relied on the school physician's judgment of a perceived risk that he could lose his one functioning kidney. Even his own doctors agreed that the safest course of action would be for the student not to play football. However, the court concluded that the judgment made by the doctors and

the school system was not medical but philosophical and was solely within the discretion of the student and his parents. Therefore, the student would suffer an irreparable injury if excluded from football in his senior year because his performance in the sport might assist the student in gaining entry into college the next year. Therefore, the court ordered the school to return the student to the football team. The moral of these stories is that a school or employer must include an individual with a disability in programs whenever the individual is qualified according to the strict eligibility requirements of the program.

In *School Board of Nassau County v. Arline*, 480 U.S. 273, 107 S.Ct.1123, 94 L.Ed.2d 307 (1986), a teacher with tuberculosis was found to be “otherwise qualified” under Section 504. The court stated: “A handicapped individual who can not meet all of a program’s requirement is not otherwise qualified if there is a factual basis in the record reasonably demonstrating that accommodating that individual would require either a modification of the essential nature of the program, or impose an undue burden.” The case is a landmark because it ruled that a person with a contagious disease could be entitled to the protection of Section 504, if the person is otherwise qualified to receive benefits. This case paved way for court decisions in which persons with contagious diseases, including those testing HIV-positive, could be considered handicapped individuals under Section 504.

Handicapped Individual

(Individuals with Disabilities)

Section 504 does not protect all persons who are otherwise qualified for a job or service. Only those individuals with a handicap, a perceived handicap, or a history of handicap are covered. Specifically, 29 U.S.C. § 794 defines a 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. The Code of Federal Regulation enforcing the Act further defines a physical handicap as 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; genitourinary; hemic and lymphatic; skin; and endocrine disorders [45 C. F. R. 84.3(j)(2)(i)(A)]. The Code also defines mental or psychological disorders as including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities [45 C.F.R. (j)(2)(i)(B)].

While the Act's coverage may seem to be broad, it can be unpredictably limited. For instance, a diabetic, having the major life activity of eating and sleeping affected by his illness, may be handicapped under the Act. In *Bentivegna v. United States Dept. of Labor*, 694 F. 2d 619 (1982), a city's requirement that all diabetics have controlled blood sugar levels violated the Rehabilitation Act of 1973 because the city's defense that high blood sugar levels in diabetics increased the risk of injury and long term health problems was not supported by the evidence.

In *Duran v. Tampa*, the candidate police officer's history of epilepsy was adequate to fit the definition of a history of handicap, which gave him protection under the act. In light of the city's treatment of him, one could also postulate that he was *perceived* as having a handicap as well, thereby wrongfully suffering from the city's discrimination.

In *Halderman v. Pennhurst State School & Hospital*, 446 F. Supp. 1295 (E.D. Pa. 1978), the trial court found that the mentally retarded residents of the state institution were

handicapped under § 504; therefore, they were entitled to nondiscriminatory habitation. The trial court's orders rectifying the institution's discrimination and mandating appropriate care and custody were later affirmed by the United States Supreme Court's decision in *Pennhurst States School & Hospital v. Halderman*, 451 U.S. 1(1981).

In the educational setting, the application of Section 504 is vigorous. First of all, Congress set out educational services as a distinct arena for reform. Furthermore, the promulgation of related laws creating more rights for disabled persons expanded its application. However, a person must still qualify as a handicapped (now defined as disabled) person before the Act protects educational access rights. In *Hairston v. Drosick*, 423 F. Supp. 180 (S.D. W. Va. 1976) the trial court ruled that a minimally handicapped child, suffering from spina bifida, was handicapped and protected under Section 504. While the child suffered from occasional incontinence and a perceptible limp, the school system could not require her mother to attend classes with her, and doing so was in direct violation of the Act. The court ruled that to deny a handicapped child access to a regular public school receiving federal financial assistance, without compelling educational justification, constituted discrimination and a denial of the benefits of such a program in violation of the statute. Furthermore, the court went on to state that the school system had to make every effort to accommodate such children and include them within the regular public classroom situation, even at great expense to the school. In the educational setting, the lack of availability of reasonable accommodation in dollar terms does not mitigate the denial of access.

Substance additions and past abuse qualify individuals for protection under 29 U.S.C. § 794 as handicapped, and generally the addiction cannot be used to exclude people from employment according to *Davis v. Bucher*, 451 F. Supp. 791 (E.D. Pa. 1978). Nevertheless,

“otherwise qualified” does not include an actively abusing addict, who is under the protection of Section 504, if he or she poses a significant safety risk to others in the performance of the jobs. Therefore, it is legal to deny a job to an active alcoholic or drug addict as a bus driver, mechanic or maintenance person. In this situation, the addiction is not the reason for discrimination; rather it is the active substance abuse that poses a safety threat to others that disqualifies the complainant from being “otherwise qualified.”

The Act protects people with HIV and AIDS as handicapped persons. In *Casey v. Lewis*, 773 F. Supp. 1365 (D. Ariz. 1991), a prison’s policy of banning HIV- and AIDS-affected inmates from food services work was not based on an individualized determination that these inmates presented a health risk of virus transmission. Instead, the court flatly stated that exclusion resulted from unfounded and irrational fears of transmission of the diseases without any scientific or medical basis. The court also stated that the prison could not justify the discrimination by any potential inmate violence. In essence, the inmates were “otherwise qualified” for food service in spite of their diseases and these diseases invoked the protection of 29 U.S.C. § 794.

Reasonable Accommodation

Employers must make reasonable accommodation for disabled job candidates who are otherwise qualified under the Rehabilitation Act of 1973. In *Wood v. Omaha School Dist.*, 985 F.2d 437 (8th Cir. 1993), the appellate court held that the school system may have violated the Rehabilitation Act of 1973 by denying employment of diabetic bus drivers on the basis that potential low blood sugar levels could constitute hazards while driving. It held that the trial court should have heard evidence of the bus drivers’ plans to self-test prior to driving,

retest every four hours, and carry precautionary snacks, then determine whether these plans significantly reduced the risk of low blood sugar reactions to an acceptable level. In essence, the city's presumption that these diabetics were not otherwise qualified for driving could have deprived them of the reasonable accommodation of the diabetic bus driver plans. Clearly, the Act protected these job candidates because diabetes is a qualifying medical condition for handicap under Section 504.

However, just as in *Kampmeier v. Nyquist*, 553 F. 2d 296 (1977), the court in *Pinkerton v. Move*, 509 F. Supp. 107 (W.D. Va. 1981) explained that the Act does not compel schools to make substantial modifications to its programs to allow disabled persons to participate; instead, it requires only that "otherwise qualified" handicapped individuals not be excluded from participation in federally funded programs by reason of their handicap. These two cases seem to be directly contradicting the holding in *Hairston v. Drosick*, 423 F. Supp. 180 (S. D. W. Va. 1976); however, when one considers the type of programs in which the handicapped students were attempting to be included, the significance of reasonable accommodation stands out. Courts will not force schools to include the handicapped into contact sports or extracurricular activities in which they most likely will not be able to participate safely, but when the general classroom or an appropriate education is at issue, the courts will force inclusion.

Where reasonable accommodation in services is available, the denial of these services to the handicapped violates Section 504. In *Hurry v. Jones*, 560 F. Supp. 500 (D.C. R.I. 1983), the superintendent of schools violated Section 504 by denying a child transportation to and from school solely on the basis of the child's handicap when the system's buses and vans were equipped with wheelchair access and special aides were already employed to assist the

handicapped on and off buses. Here, the child was only requesting a reasonable modification of existing transportation services to accommodate the handicap. Moreover, that modification would not have placed an undue financial or administrative burden on the school system. Clearly, if the facilities are already at the disposal of an agency receiving federal financial assistance, it must use them to benefit the handicapped as well as the general public, in spite of the necessity to make adjustments to the delivery of their services.

However, if the accommodation requires a fundamental alteration to the institution's program, it is not reasonable. An illustrative case is *Southeastern Community College v. Davis*, 442 U.S. 397, 99 S. Ct. 2361 (1979). In this case, the Supreme Court indicated that a nursing school did not discriminate against a hearing-impaired applicant when it refused to admit the applicant to the program. The Court held that Davis was not otherwise qualified for the nursing program because it would be difficult to ensure patient safety without close supervision if Davis took part in the clinical phase of the nursing program. The Court concluded that the nursing school could only allow Davis to take academic courses. The Court held that

Whatever benefits Davis might realize from such a course of study, she would not receive even a rough equivalent of the training a nursing program normally gives. Such a fundamental-alteration in the nature of the program is far more than the "modification" Section 504 requires.

General Accommodation under the Code of Federal Regulations (C.F.R.)

To combine the case law, satisfy court mandates and provide federal funding recipients with notice of their accommodation requirements, 45 C.F.R. § 84.12 sets out employment accommodation access studies to be performed and remedial action to be accomplished by each recipient to make their environments handicapped accessible based on

employee and applicant requests. Furthermore, 45 C. F. R. §§ 84.22, 84.23 of Subpart C sets out the physical requirements and methods of obtaining approval for new construction, alteration, remediation, and any planned structural changes made to accommodate the handicapped. This way, schools, hospitals, and state agencies have guidance in providing access to their physical plants for the handicapped. Promulgation of these rules facilitated reasonable accommodations and transitions.

Specialized Treatment Providers

In the arena of social services and education, the courts have explicitly stated that an agency receiving federal financial assistance may treat disabled persons differently from one another; the Rehabilitation Act of 1973 does not proscribe such conduct. In *People First v. Arlington Development Ctr.*, 878 F. Supp. 97 (W.D. Tenn. 1992), the court allowed social services to treat similarly developmentally disabled persons differently in residential placement because the Act does not forbid discrimination among similarly disabled persons. Such a finding gives schools and welfare organizations flexibility in placing, treating, and educating the disabled. Unfortunately, the Rehabilitation Act of 1973 does not bind these agencies catering solely to the disabled because they do not receive federal financial assistance for programs offered to the general public. In *Lincoln Cerpac v. Health and Hosp. Corp.*, 977 F. Supp. 274 (S.D. N.Y. 1997), a disabled children's evaluation and treatment center's planned closing and transfer to other facilities that would not offer the same services was not governed by the Act because the center clinic provided specialized services to the disabled and not to the public at large. Therefore, the Act did not prevent the center from closing, transferring its services, or failing to continue the same level of services. Clearly, the Rehabilitation Act only governs those agencies, departments, and health care and education

providers that cater to the general public, requiring them to provide services to disabled persons as well.

Discrimination

Section 504 of the Rehabilitation Act prevents a federally funded agency from actually showing intentional and willful exclusion of the handicapped, and the handicapped must show some level of intent to obtain relief. For instance, a statement by the agency or department to the effect that they do not hire people with a particular handicap may be used to deny a handicapped person employment. This statement invokes the Act as *Wood v. Omaha School Dist.*, 985 F. 2d 437 (8th Cir.1993) illustrated when diabetics were able to have the employer's stated policy of exclusion tested in court. However, willful discrimination does not include unsuccessful attempts to accommodate or include the handicapped. In *Marvin H. v. Austin Independent School System*, 723 F. 2d 432 (5th Cir. 1984), the handicapped child could not prove discrimination in violation of 29 U.S.C. § 794 because there was no intent to discriminate. In this case, the child failed to make the required showing. The child's parents admitted that the school system did not act out of ill-will and sincerely tried to perform its jobs and its duties to the child under state and federal guidelines; therefore, there was no violation of the Act. Moreover, another case shows that bad judgment on the part of education officials does not violate the Act either. In *Johnston v. Ann Arbor Public Schools*, 569 F. Supp. 1502 (E.D. Mich. 1983), the school's transfer of a handicapped child from a less restrictive setting to a more restrictive one was not discrimination even though the transfer was based on a faulty individualized education plan. In that case, the court desired the showing of either bad faith or gross misjudgment on the part of the school

officials and not simple mistakes. Furthermore, the withholding of a high school degree is not discrimination, even when a graduation is conditioned on minimal competency tests. In *Brookhart v. Illinois State Board of Education*, 697 F. 2d 179 (7th Cir. 1983), the appellate court ruled that a student who is unable to learn, even due to a learning disability, is not a qualified individual for a high school diploma under the Act. Therefore, the requirement of a minimal competency test for graduation is not discrimination under § 504 of the Rehabilitation Act of 1973.

Failing to create programs for the handicapped is not discrimination, even if similar programs are offered to the general public through the use of federal financing. One court declared that the Act does not require states to create special programs for handicapped children; it merely prevents an otherwise qualified handicapped individual from being excluded from existing programs or activities receiving federal financial assistance, according to *Parks v. Pavkovic*, 753 F. 2d 1397 (7th Cir. 1985). While this case is controversial, the United States Supreme Court twice declined the case for higher appeal, cert. den., 473 U.S. 906 and cert. Den., 474 U.S. 918. Essentially, educators must provide specialized services to handicapped children (evaluation and specialized education under an individualized education program), but for other areas of service and service providers such as parks and recreation, that requirement does not exist.

What is discrimination then? First of all, in treatment of the handicapped, acts of educators without study and investigation may not be based solely on summary decisions. In *M.R. v. Milwaukee Public Schools*, 495 F. Supp. 864 (E.D. Wis.), disabled children won an injunction preventing their school system from terminating their placement at day treatment

educational centers because the school system did not perform full and impartial evaluations of their educational needs and handicapping conditions.

In *B. v. Cronin*, 542 F. Supp. 102 (N.D. Ill. 1980), the trial court found that the state might have discriminated against emotionally disturbed children by not providing them with therapeutic counseling so that they might be made capable of attending suitable schools. The lack of counseling, in effect, deprived the children of the accommodation they required in order to receive appropriate education under Section 504 of the Rehabilitation Act of 1973. Clearly, the Act, by language, by court interpretation, and by use with other laws, places a higher burden on educators than on any other social service provider.

Along with any other AIDS- or HIV-- infected individual, Section 504 also protects children with these syndromes in the education setting. Any attempt to exclude them from public education because of their disease is willful discrimination that violates 29 U.S.C. § 794. In the well-known case, *Thomas v. Atascadero Unified School District*, 662 F. Supp. 376 (D.C. Ca. 1987), the court held that the school system's exclusion of Ryan was in violation of Section 504 in spite of the school's offered accommodation of at-home tutoring and the fact that the child hit another child at school. In its ruling, the court stated that no medical or scientific evidence existed for the spread of AIDS through casual contact or human bites and the school had no rational justification for Ryan's exclusion from school. As a consequence, Ryan, an otherwise qualified disabled individual for kindergarten, was a victim of discrimination under Section 504. The school system was forced to readmit Ryan in regular classes.

Higher Burden of Accommodation on Educators

In *J. v. Pealand Independent School Dist.*, 520 F. Supp. 869 (S. D. Tex. 1981), a severely multiple handicapped child, was denied free appropriate education when the school system failed to provide placement in an educational residential facility that was better able to meet the unique needs of this severely intellectually impaired child who required year-round and around-the-clock behavioral management and intensive language development programs. This discrimination under the Act was found with the court's reliance on extensive evidence that the child had made no meaningful progress in the school's recommended programs and that she had potentially regressed in certain skill areas. In this case, the court ruled that the school system had to provide this service, free of any cost to the child's parents, under the child's individualized education plan in spite of the financial and administrative burdens. In this situation, the Act imposed an obligation upon the school system to provide a comprehensive range of services to accommodate a handicapped child's educational needs, even if the school must resort to residential placement.

A school's refusal to provide quasi-medical services to handicapped children as an accommodation for education is also discriminatory under the Act. In *Tatro v. Texas*, 703 F. 2d 823 (5th Cir. 1983), 741 F. 2d 82 (5th Cir.) on remand from the United States Supreme Court after affirming in part and reversing in part (104 S. Ct. 1269) and (104 S. Ct. 1703) and (104 S. Ct. 3371), the courts found that the school's refusal to provide daily catheterization as a part of a child's special education was discrimination under 29 U.S.C. § 794 because that refusal thereby excluded the child from a program or activity receiving federal financial assistance. Clearly, children who are incontinent, as in *Hairston v. Drosick*, 423 F. Supp. 180 (S.D. W. Va. 1976), or require medical devices to manage physically cannot be excluded

from public schools simply because the provision of medical services or personal hygienic assistance might be costly. In fact, the Supreme Court, in *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), stated that as long as a physician's care was not required, nursing or trained lay persons must be provided to a child with a disability as the accommodation mandated by Congress as a related service for the child to receive the benefit of special education. The court ruled that the provision of routine catheterization, required once every three to four hours, was a reasonable accommodation under the Act. The court specifically defined medical services falling outside of a school's responsibility as that service requiring medical expertise for the purpose of diagnosis and evaluation. The Court further held that a school must provide the medical services of a school nurse to administer medication or treatment if such treatment is required during the school day because such service would be a related service necessary to aid a handicapped child to benefit from free appropriate education. Clearly, the obligation of public school is high under Section 504 and the Individuals with Disabilities Education Act (IDEA).

Furthermore, a school's deprivation of counseling and therapeutic treatment of emotionally disturbed children is also violation of 29 U.S.C. § 794. Counseling and treatment might have enabled these children to attend suitable schools, and the lack of such psychological services is discrimination under Section 504. Clearly, schools cannot simply provide instruction. Section 504 requires them to provide quasi-medical and psychological services as well as assistive (like wheelchair lifts) and therapeutic devices. Public education is required to provide all the needs for a child with a disability. In order to resolve some of the confusion stemming from varying court decisions, the Individuals with Disabilities Education Act specifically sets out these kinds of services to enable children with disabilities

to gain access to regular and special education at public schools. 20 U.S.C. § 1401 (1997) requires that the developmental, corrective, and supportive services of speech-language pathology and audiology services, psychological and occupational services, recreation services, social work services, and counseling services be available.

Nevertheless, there is a situation where a child with a disability is not entitled to extra services under the Act: when the child can perform in school without the service requested. In *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court held that schools do not have the obligation to maximize a handicapped student's potential; instead they must provide an adequate free appropriate education suited to the individual child to enable him or her to benefit from public education. In the specific circumstances of the case, a first-grade child with severe hearing and speech disabilities was not entitled to the services of a full-time sign language interpreter when she was excelling in class without such services, was an excellent lip-reader, was provided with a tutor for the deaf for one hour a day, and the sign interpreter who was experimentally assigned to the child for two weeks reported to the school system that she did not need hour-to-hour assistance at this time. While the Court refused to issue a blanket requirement (because all handicapped children require different levels of assistance to benefit from education), it flatly stated that a school must provide only those services to provide an adequate education. Passing grades and advancement from grade to grade are evidence of an adequate education. The school was not under an obligation to assist the hearing impaired child to excel further. Since 1982, the understanding is that the Court's ruling means schools must provide access to an adequate education to children with disabilities.

The Act's Specific Requirements on Educators, Administrators, and Regulators

The statute itself does not contain the reason for the high duty to accommodate and include handicapped children (children with disabilities) in educational programs. After a court battle *Cherry v. Matthews*, 419. F. Supp. 992 (D. Col. 1976) over the Secretary of Health, Education and Welfare's obligation to promulgate rules to enforce the Rehabilitation Act of 1973, the court ordered the secretary to promulgate rules and guidelines swiftly for enforcement based on case law and related statutes because the Act was not meant to be self-executing. As a result, federal regulation was put in place, specifically, 45 C.F.R. § 84 *et seq.* 45 C.F.R. § 84.1 states that "the purpose of this (Code of Federal Regulation) part is to enforce 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." 45 C.F.R. § 84.2 specifically extends coverage to any entity receiving assistance from the federal Department of Health, Education and Welfare as well as any program receiving such assistance or any benefit from such assistance.

Upon enactment of the code section applicable to Section 504, the enforcement of Education of the Handicapped Act and its amending legislation, the Education for All Handicapped Children Act of 1975 (20 U.S.C. § 1401 *et seq.*) was included along with the enforcement of the Rehabilitation Act of 1973 and its amendments. Now, the Code of Federal Regulations includes a section, enforceable by Section 504 by administrative judges and courts, which include the right of free appropriate education for disabled children. Subpart D of 45 C.F.R. § 84 is specifically directed to education. 45. C.F.R. § 84.31 sets out education as its target by stating that Subpart D specifically applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from federal

financial assistance. § 84.32 then requires that these educators “annually identify and locate every qualified handicapped person residing in the recipient’s jurisdiction who is not receiving public education; and take appropriate steps to notify such identified persons and their parents of the recipient’s (the educator’s) duty under this subpart” (Subpart D). The next sections then define the educator’s duties over and above notification. Section 84.33 sets out the Free Appropriate Public Education obligations of school systems and institutions throughout the country. These obligations are enforceable through the administrative process of the Code of Federal Regulations, each school system’s internal administrative grievance process mandated by 45 C.F.R. § 84.7, and the courts under Section 504, *after* all grievance procedures have been exhausted as mandated by 45 C.F.R. § 84.61, *Doe v. New York University*, 442 F. Supp. 522 (S.D. N.Y. 1978), and *NAACP v. Wilmington Medical Center, Inc.*, 426 F. Supp. 919 (D.C.Del. 1977). The case of *Smith v. Robinson*, 468 U.S. 992, 104 S.Ct. 3457, 82 L.Ed.2d 746 (1984) led to passage of the Handicapped Children’s Protection Act of 1986 (P.L. 99-372), an amendment to the IDEA that authorized courts to award attorney’s fees to prevailing students and parents in IDEA lawsuits. It also legislatively overruled the Court’s ruling in *Smith* that the IDEA was an exclusive remedy for disabled students. Section 504, the Civil Rights Act of 1964, and the IDEA provide for allowing disabled students to pursue and combine available remediation.

The power of Section 504 is immeasurable. First, a school cannot, for any reason, inadequately provide teachers, paraprofessionals, or counselors. Furthermore, special instructional materials and devices must be provided to those disabled children who need them. In *Lora v. Board of Education*, 456 F. Supp. 1211 (E.D. N.Y.), the court held that a lack of adequate support staff, curriculum, and facilities in special day schools within the

public school system violated 29 U.S.C. § 794 (Section 504) and its accompanying regulations (the C.F.R.). The court stated that the school board had breached its duty of assurance under 45 C.F.R. § 84.5 that children with disabilities will receive access to an education suited to their specific needs. If more supervision is required, then the school system must provide it. From this requirement, special education class sizes are extremely limited and suited to the individual educational needs of the children in those classes. A class size of six may not be appropriate for some children while a class size of eight may be appropriate for others. As a result, significant professional and monetary school resources are directed solely towards special education.

Free Appropriate Public Education

The codes 45 C.F.R. § 84.33 set out the obligation of educators to the disabled. First of all, the Code mandates that all recipients of federal financial assistance that operate 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. Here, the qualified handicapped person is a child within the age range of children entitled to a free public education, from preschool to high school. A severe handicap, including severe mental retardation, will not disqualify a child who is otherwise a qualified person under Section 504 even though that child is so severely disabled that residential treatment is required for skill retention and educational progress. This definition expanded some of the earlier court decisions under the Rehabilitation Act, making the law's application uniform throughout America's judicial circuits. Formerly, if a school system had no residential treatment program in place, the

courts refused to enforce a child's educational right to one. Now, if a child's individual education plan calls for a year-round schooling or residential placement, that child will have access to such a program. In *Georgia Association of Retarded Citizens v. McDaniel*, 716 F. 2d 1565 (11th Cir. 1983), the appellate court mandated that children with disabilities that include mental retardation, Down's syndrome, and other specific learning disabilities must be provided year-round instructional services even when the public school system does not offer year-round schooling to its general population if those children would suffer a significant regression (the loss of skills acquired during the regular school sessions) in the absence of year-round services and if sufficient educational recoupment will occur in a reasonable time when services are resumed. Thus, the court explained that as long as a child would lose a significant amount of acquired skills and spend an unreasonable amount of time in re-acquiring them during the next school session, that child is entitled to an extended school year program under the mandate for free appropriate education and Section 504. Furthermore, the schools must finance the administrative cost of evaluating the disabled children and logistically placing them in classes meeting their instructional and supervisory needs. An individualized education program is required to determine whether special education services such as an extended school year program would provide a benefit for a child with a disability. Again, the courts have ruled that these costs are reasonable burdens of accommodation on school systems.

Codes 45 C.F.R. § 84.33 and Section 504 together place significant costs on school systems, including the cost of paying tuition to private educators. In *Department of Education v. D.*, 531 F. Supp. 517 (D.C. Hawaii 1982), the court enforced the administrative law judge's order that the state department of education had to pay for the tuition at a private

child care center for a child with cystic fibrosis affecting her windpipe, so that the child could receive assistance in the replacement of her tracheotomy tube. The court held that § 84.33 required the department to include private placement in its range of alternatives to meet the educational and physical needs of the disabled child. In this case, the supplementary physical services that the child required in order to receive access to an education were available through the private facility. Furthermore, the private facility offered the child these services at no cost over the basic cost of tuition, and therefore, the accommodation was appropriate (necessary for the child to breathe) and reasonable. If a child cannot attend school without an assistant or device to breathe, then the school must either provide that service or pay the private tuition to facility that can provide it. Obviously, the burden of private tuition is not an undue burden on schools as federal financial assistance recipients under Section 504.

While the combination of the codified version of Section 504 and the Education of the Handicapped Act (later the Education for All Handicapped Children Act [1975] and renamed in 1990 the Individuals with Disabilities Education Act) may require the provision of extra services for the disabled, even private placement, these laws do not require schools to institutionalize children with even the most severe behavior disorders. In *Darlene L. v. Illinois State Board of Education*, 568 F. Supp. 1340 (N.D. Ill. 1983), the state board of education did not violate Section 504 or the Education of the Handicapped Act (and their federal codifications) by refusing to place a child with a severe behavior disorder in a psychiatric hospital. In its opinion, the court held that the state provided the specific special education required under the Education of the Handicapped Act and its codification, and that Section 504, set out in very general terms, did not mandate more. Clearly, if the child's individual education program defines a disabled child's needs and addresses those needs,

then the school system does not have to do more, especially in light of the fact that institutionalization is highly disfavored under the law because it segregates the child from society and it does not prepare the child for independent living. The court agreed with the Illinois Department of Education in its contention that the most appropriate education for the child was within its system and not in a hospital.

The federal code 45 C.F.R. § 84.33 defines what an appropriate education is and how educators are to achieve it – through individualized education plans (hereinafter referred to as IEPs). Specifically, § 84.33 (b) states, “the provision of an appropriate education in 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 the non-handicapped persons are met and (ii) are based on adherence to procedures that satisfy the requirements of §§ 84.34, 84.35 and 84.36.” Next, the subsection sets out the provision for individualized education plans: “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 this section.” Clearly, the most certain method for a school to meet its federal obligation to children with disabilities is to establish procedures to make individualized education plans fair, standard, and in compliance with a child’s civil rights, equal protection rights, and due process rights as well. This way, schools can ensure that, in spite of varying IEP’s and recommendations for education and treatment, all IEP’s will be created through a standard procedure that treats each child in a standard and fair fashion and that includes the opportunity for the child and his or her parents to object through an administrative hearing process under the Code of Federal Regulations and each school system’s procedures regulations as well.

Individualized Treatment and Education Programs

In *Garrity v. Gallen*, 522 F. Supp. 171 (D.C. N.H. 1981) the state school and training center for the mentally retarded violated Section 504 of the Rehabilitation Act of 1973 by failing to evaluate and provide individualized service plans for its residents. The school provided some residents with some individualized plans while not providing them to others, and the court ruled that the Act could only be satisfied by the school's establishing goals for each handicapped individual and to implement plans to reach these goals for each residents. Section 504 mandates individualized treatment where ISP's are the cornerstone of such treatment. The court ordered the school to complete ISP's on every resident and implement these plans. The ISP for state institutions applies to schools under the Act and the Code as IEP's.

The importance of a disabled child's IEP is driven home by *M.R. v. Milwaukee Public Schools*, 495 F. Supp. 864 (E.D. Wis..) where the courts enjoined the school system from terminating the placement of handicapped children in day treatment educational centers because the schools did not fully and impartially evaluate the educational needs of these children. Furthermore, the school system violated its own grievance procedures that ensured the children's due process rights in closing day treatment centers. By failing to investigate each child's need for programs offered at the day treatment centers as well as by terminating the placement without adequate notice to parents, the school violated Section 504 and the Code of Federal Regulations enforcing it. Careful scrutiny of a program offered within a school system and the needs (if any) of handicapped children met by such program must be evaluated before a school can discontinue it. Once established, a school system cannot summarily terminate a program for disabled children. A final decision is contingent upon a

recommendation to parents, interested agencies, and advocates of viable alternatives. Anyone critical of today's educational system for inaction or slow action in providing services can look to Section 504; however, the law and the courts favor caution, due process, and care in academic changes for the disabled, even if speed in addressing new or changing educational needs as well as program activity is forgone.

Discrimination Against Children with Disabilities that Include Behavior Disorders

A true challenge exists for the treatment and education of children with psychological and learning disabilities. Handicapped children may not be suspended, expelled, or otherwise punished for manifestations of their disabilities. In *Jonathan v. Caddo Parish School Board*, 875 F. Supp. 352 (D.C. La. 1994), the court held that a school could not suspend a learning disabled child for conduct related to his or her disability. This prohibition places a heavy burden on schools and the individualized education plan for each disabled child. The IEP must contain not only behavioral goals but also a list of acquired social and behavioral skills. Since the exercise of acquired skills is not within a child's disability, punishment, including suspension, is not discrimination under the Act. However, this does place a heavy burden of documentation on teachers, school counselors, and administrators – a burden that the courts find *reasonable*.

However, should the child's individual education program call for a restrictive environment or placement in a service apart from the public schools to accommodate a child's behavioral disorders where the child would be unreasonably disruptive or dangerous to other children, the courts will uphold such a placement as long as the IEP was arrived at in a manner consistent with Section 504, the code of 34 C.F.R. § 300.52, and the least

restrictive environment provision of the IDEA, 20 U.S.C. § 1412. In *Clyde v. Puyallup School District*, 35 F.3d 1396 (9th Cir. 1994), the court held that restrictive placements are appropriate where the safety of the disabled child or other students is threatened and where the child's disruptive behavior significantly interferes with the education of other students.

Today ruling about 504 cases are often mirroring those found in special education

One court of appeals has concluded, "Money damages are available under Section 504," *Rodgers v. Magnet Cove Public Schools*, 34 F.3d 642, 645 (8th Cir. 1994). In *W.B. v. Matula*, 63 F.3d 484 (3rd Cir.1995), the court concluded that when district refused to evaluate, classify, and provide appropriate services to disabled child, damage relief is available under Section 504, IDEA, and Section 1983.

In *Polera v. Bd Ed. Newburgh City Sch. Dist*, (2nd Cir. 2002), the court found that seeking damage under Section 504 and the Americans with Disabilities Act (ADA), the disabled child must first exhaust administrative remedies under IDEA.

Under the Section 504, schools are being required to provide accommodation plans with a referral and accountability system to assure that educators meet both the legal expectations and the spirit of the law. The concern of the court responses about Section 504 has been: Did the school exercise caution and make a good faith effort to meet the needs of the student?

While the cost of accommodation most likely will not be a defense for a school system in refusing to supply the accommodation desired by a handicapped child's parents, it is more often successful to employers under Section 504. Under the combination of 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973), the Individuals with Disabilities Education Act (which followed the Education of the Handicapped Act and the Education for

All Handicapped Children Act), and the Code of Federal Regulations enforcing these laws, children with disabilities are afforded more rights in education than they will be later in life in the work-day world.

Conclusion

The expansion of educational rights for children with disabilities continues to force schools to spend more and more of their budgets on special education and appropriate education through school programs that include resource classes, individualized educational programs, extended school years, and personal services to meet the needs of children with disabilities. While the cost continues to rise, one can either infer that Congress is forcing schools and communities to favor the disabled or that, finally, the disabled are being more adequately embraced in society including educational communities after thirty years of reform. Section 504 and the court decisions discussed here can assist administrators in determining how to address adequately the individual needs of children with disabilities whom they educate. However, administrators in education communities must keep in mind that a blanket policy will not serve those children. The law stresses individualized treatment through a fair and standardized education delivery system. Just as in education, the law has become more certain in the employment arena. However, educators require more guidance simply because their obligation to the handicapped is so much greater. Meeting the educational obligation to children with disabilities is still a great challenge, and future litigation is a certainty because of the individual and case-by-case approach of disability law enforcement and interpretation.

Law of the People's Republic of China on the Protection of Disabled Persons

In 1990, the Law of the People's Republic of China on the Protection of Disabled Persons was passed. It is the most extensive piece of legislation protecting the rights to equality and participation of people with disabilities in China. It clearly specifies government obligations as well as legal principles for prevention, rehabilitation, education, employment, and welfare of persons with disabilities. The law is divided into fifty-four articles included in the following nine chapters:

- Chapter I. General Provisions
- Chapter II Rehabilitation
- Chapter III Education
- Chapter IV Employment
- Chapter V Cultural Life
- Chapter VI Welfare
- Chapter VII Environment
- Chapter VIII Legal Liabilities
- Chapter IX Supplementary Provisions

Chapter I (Articles 1-12) summarizes the responsibilities of the government, society, China Disabled Persons' Federation (CDPF), and foster, guardian, and family members of the disabled persons. It also lists the obligations of disabled persons in a preaching tone. It points out that the legal base of the law is the Constitution; the purpose of the law is to ensure the disabled persons' equal rights. Article 2 defines both "a disabled person" and "disabled persons" as follows:

A disabled person is a person who suffers from abnormalities or loss of a certain organ or functions, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal.

The term “disabled person” refers to those with visual, hearing, speech or physical disabilities, intellectual disability, mental disorder, multiple disabilities and/or other disabilities.

Chapter II, III, and IV (Articles 13-35) address Rehabilitation, Education, and Employment issues. They state that “The state shall guarantee the right of disabled persons to education” (Article 18). The state shall “exempt disabled students who accept compulsory education from tuition” (Article 18). Ordinary primary and junior middle schools must admit those “disabled students who are able to adapt themselves to life and study there.” Ordinary senior schools, secondary polytechnic schools, technical schools and institutions of higher learning “must admit disabled students who meet the state admission requirements and shall not deny their admission because of their disabilities” (Article 22).

Employment for disabled persons in China basically follows two tracks: concentrated job placement and dispersed job placement. Concentrated employment centers in welfare enterprises for disabled persons. Dispersed employment uses a quota system and preferential policies to employ disabled persons in appropriate types of jobs and posts. The government offers tax reduction or exemption to welfare enterprises, businesses, or agencies employing disabled persons (Articles 28-30, Article 33). Article 27 proclaims, “The state protects disabled persons’ right to work.”

Chapter V (Articles 36-39) stipulates the measures for the state to enrich the disabled persons’ spiritual and cultural life. Chapter VI spells out that the state “shall provide relief, the care of legal guardian and/or financial resources, for disabled persons who are not in a position to work.”

Chapter VII concerns barrier-free environments for disabled persons. It states the state “shall gradually regularize the Design Code for the Accessibility of Disabled Persons to Urban Roads and Buildings.” It also proclaims the third Sunday of May as a “National Day of Assisting Disabled Persons.”

Chapter VIII states that when disabled persons’ lawful rights are violated, the offended persons shall have the right to “appeal to the competent authorities or institute lawsuits.” The chapter also stipulates the heavier punishment for “whoever infringes upon the rights of persons or other lawful rights of disabled persons by taking advantage of their disabilities, and which constitutes a crime.”

The last chapter expects the concerned departments to formulate relevant regulations in accordance with this law.

Unlike this law’s U.S. counterpart, Section 504 of Rehabilitation Act of 1973, this law does not have legal cases. Extensive research to find cases under this law produced no results, even using Chinese website while inside China. The final result that came back is that there is not a single case under this law in China passed on December 28, 1990, effective May 15, 1991.

CHAPTER III

COMPARISON AND CONTRAST:

ANALYSIS OF THE U.S. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROTECTION OF DISABLED PERSONS

As noted in Chapter II, both the U.S. law and Chinese law showed awareness and responsiveness toward the needs of people with disabilities. Both laws have their respective constitutional grounds to protect the rights of people with disabilities. Furthermore, both laws share a common purpose: to include people with disabilities as equal beings in the daily lives in the societies in which they live. While these two laws share a good number of commonalities, there are also differences between them. In some areas, the differences between these two laws are significant.

Over all, the letter of the Chinese law seems to address more areas than the U.S. law and is more preaching in tone. It contains public services, legal sanctions for infringement of the rights of the disabled as well as prevention, rehabilitation, education, employment, welfare, and cultural and environmental issues. Interestingly, it also preaches on the disabled persons' obligations. The state and local governments are responsible for administering the Law. In the Chinese law, "Equality is primarily achieved through governmental assistance, rehabilitation and employment in welfare enterprises, and less through prevention of discriminatory exclusion of the disabled people from all walks of life." (International

Disability Rights Monitor, 2003, p. 6). Essentially, the Chinese law is a government-run social welfare legislation.

“Section 504 of the 1973 Rehabilitation Act is acknowledged as the first national civil rights law to view the exclusion and segregation of people with disabilities as discrimination and to declare that the Federal Government would take the central role in reversing and eliminating this discrimination” (Rehabilitating Section 504, Report to the U.S. President by The National Council on Disability, Feb. 12, 2003). It clearly defines “discrimination” with specific actions considered discriminatory.

The U.S. law defines the term “handicapped person.” The Chinese Law defines the term “disabled person.” The latter defines it in terms of physical and psychological conditions. U.S. law defines it in terms of functional ability. Besides those individuals with a handicap, the U.S. law also covers those individuals with a perceived handicap or a history of a handicap. The U.S. law protects people with HIV and AIDS as handicapped persons. Clearly, the U.S. Law offered a much broader protection than the Chinese law.

In the Chinese law, there is no obligation of accommodation, either in educational settings or at workplaces. Article 22 states, “Ordinary primary schools and junior middle schools must admit disabled children or juveniles who are able to adapt themselves to life and study there” and “Ordinary institutions of preschool education shall admit disabled children who are able to adapt themselves to the life there.” It seems the Law only emphasizes that disabled persons need to adapt themselves to whatever environments they are in, with nothing at all about the accommodation that the disabled persons need. In reality this constitutes denial of the services to people with disabilities.

In the United States, federal regulations implementing Section 504 (45 C.F.R. § 84) clearly state that a free and appropriate public education (FAPE) must be made available to all qualified students with disabilities, regardless of the nature or severity of the disability. The educational needs of students with disabilities must be met as adequately as the needs of students without disabilities. In each case, the individual educational needs of the students with disabilities should be addressed in the least restrictive environment (LRE) possible. Evaluation and placement procedures shall be nondiscriminatory. Due process procedures and a review procedure shall be in place.

According to the regulation, specific supplementary aids must be provided to students with disabilities when necessary. These may include interpreters for students who are deaf, readers for students who are blind, and equipment to provide physical accommodations for students with mobility impairments.

Students with disabilities may be placed in regular education classes with accommodations such as a tape recorder, extended time for test taking, changing test delivery, or special services such as using classroom note-taker, and after-school tutoring. There are many services that must be available in regular classrooms for Section 504 eligible students to help level the academic playing field [34 C.F.R. 104.33 (b)(1) (1991)]. This level playing field was recognized as a civil right.

The U.S. law placed a higher burden of accommodation on educators.

Chinese law Article 22 also clearly stipulates:

Ordinary senior middle schools, secondary polytechnic schools, technical schools and institutions of higher learning must admit disabled students who meet the state admission requirements and shall not deny their admission because of their disabilities.

The intriguing part here is those unspecified words “state admission requirements.” Who sets those requirements? What are those requirements? The Chinese Educational Ministry sets admission requirements. The guidelines on the Physical Standard for National Higher Education Enrollment, revised in April 2001, specifically and severely restrict educational options for people with disabilities. According to Elisabeth Rosenthal (2001):

Students whose legs have a difference in length greater than two inches or who have a spinal curvature of more than 1.6 inches are barred from a variety of majors, including geology, marine science, civil engineering, forensic medicine, and veterinary science. They are not even allowed to sign up for short courses in cooking, sculpturing and archaeology. Those who can not walk may not be enrolled in education, diplomacy, law or journalism.

“On top of that, the ministry gives each province wide leeway in ‘deciding whether to enroll’ based on ‘the demands of the major.’”

The set of revised guidelines is actually less limiting than in previous years.

The state admission requirements have physical standards as well as testing scores. As a result, many bright students (otherwise qualified individuals) are excluded from many academic programs or from attending any university at all because of their disabilities.

Article 18 of the Chinese law clearly stated, “The state shall guarantee the right of disabled persons to education.” The reality is contradictory: there is a severe discrimination against people with disabilities (Rosenthal, 2001). The one responsible for administering the Law (state government) made the guidelines excluding people with disabilities from institutions of higher learning.

The author had personal experience of being rejected by universities twenty-three years ago (1982) as a youngster applying for college entrance in China because of a history of polio at the age of three. Now, twenty-three years later and fourteen years after the effective date of the Chinese law, discrimination against people with disabilities in China is

still so severe. Ironically, this can partially explain why there are no court cases under the Chinese Law.

Section 504 of the Rehabilitation Act is a civil rights law that prohibits discrimination because of disability in programs and activities, public or private, that receive federal financial assistance. The law does not provide funding for special education or related services, but it gives the federal government power to take funding away from programs that do not comply with the law. Therefore, programs receiving federal funds may not discriminate against those with disabilities based on their disability status. All government agencies, federally funded projects, K-12 schools, postsecondary entities (state colleges, universities, and vocational training schools) fall into this category.

In the United States, post-secondary educational institutions or colleges and universities receiving federal funds must not discriminate in the recruitment, admission, or treatment of students with disabilities. Students with documented disabilities may request modifications (such as changing the length of time for degree completion, substituting specific courses required for degree completion requirements), accommodations, or auxiliary aids (such as readers, interpreters, and taped texts) which will enable them to participate in and benefit from all postsecondary educational programs and activities. Postsecondary institutions must make such changes to ensure that the academic program is accessible to the greatest extent possible by all students with disabilities. Under the provisions of Section 504, universities and colleges may not:

1. limit the number of students with disabilities admitted
2. make preadmission inquiries as to whether or not an applicant is disabled
3. use admissions tests or criteria that inadequately measure academic qualifications

4. disqualify disabled students because special provisions were not made for them
5. exclude a qualified students with a disability from any course of study
6. limit eligibility to a student with a disability for financial assistance or otherwise discriminate in administering scholarships, fellowships, internships, or assistantships on the basis of handicap
7. counsel a student with a disability toward a more restrictive career
8. measure student achievement using modes that adversely discriminate against a student with a disability
9. establish rules and policies that may adversely affect students with disabilities

At workplaces, employers must make “reasonable accommodation” for employees with disabilities in order to perform their jobs. This is stipulated in the U.S. law. Over thirty years after its inception, this has become common sense and common practice in the employment arena in the United States, while in China, there is no such legal obligation.

In Article 46, the Chinese law mentions “accessibility,” but its realization for disabled persons will be “gradually” done. This leaves people a with a hope that change will come sometime in the future. For example, in the Beijing train station it is almost an insurmountable task for people with a mobility impairment to negotiate the steps between the waiting room and the platform to get on the train. The gaps here between the two laws are too large to ignore.

Chinese law did address public services for the blind. They can use local buses, subways and ferries free of charge. Disabled persons can carry on board free of charge their essential assistive devices (Article 44).

Over all, the Law of the People's Republic of China on the Protection of Disabled Persons is precedent setting in China. Clearly it is government-provided and government-controlled welfare legislation. It is still in its infancy. It is vague on what constitutes discrimination. In this law, individual rights to equal treatment are not addressed. The Chinese law exhibits anti-discrimination language in slogan like statements (Article 3) and only one specific provision in the entire legislation (in employment practice, Article 34). The Law carries a quite limited notion of equality.

Coming about eighteen years earlier, the U.S. law (Section 504 of the Rehabilitation Act of 1973) contains unusually forward ideas about the rights of people with disabilities. It is the first civil rights law for people with disabilities in the United States. This law states discrimination with reference to those areas covered by the law, including public accommodation, employment, and various services. Under each area, the definition presents a list of actions considered discriminatory.

Both the U.S. and Chinese laws have profound impacts on the lives of people with disabilities. They are both precedent setting in their respective countries. However, because it lacks accessibility and accommodation mandates, as well as effective enforcement mechanisms and an independent judicial system, the Chinese law conveys a rather limited scope of equality and fails to achieve its intended purpose: to include people with disabilities into Chinese society. As a result, people with disabilities in China still suffer from discrimination at work, at school, and in everyday lives with no effective means to seek relief.

In contrast, with a clear definition of the term "discrimination," with accessibility and accommodation mandates, with effective enforcement mechanisms and an independent, powerful judicial system, the U.S. law serves its purpose. As a result, people with disabilities

are much more adequately included into American society including educational communities.

See Table 1 at the next page.

TABLE 1. COMPARISON TABLE

| | U.S. Section 504 | Chinese Law |
|---|--|---|
| Respective Constitutional Grounds | Yes | Yes |
| Purpose | To Include People With Disabilities As Equal Beings Into Daily Lives Of Their Society | To Include People With Disabilities As Equal Beings Into Daily Lives Of Their Society |
| Defining “Discrimination” | Yes | No |
| Nature | Civil Rights Law | Social Welfare Law |
| Who Are Covered | Anyone With A Disability, With Perceived Disability, With A History Of Disability, With HIV & AIDS | Anyone with A Disability |
| Defining “Disability” | In Terms Of Functional Ability | In Terms Of Physical & Psychological Conditions |
| Accessibility & Accommodation Mandates | Yes | No |
| Effective Enforcement Mechanism (Including Litigations) | Yes | No |

CHAPTER IV

FINDINGS AND RECOMMENDATIONS

Section 504 of the Rehabilitation Act of 1973 and the Law of the People's Republic of China on the Protection of Disabled Persons (1991) are both precedent-setting laws for people with disabilities in their respective countries. Both of these laws have far-reaching impact on the lives of the people with disabilities. By examining these two laws, significant gaps were found between them. The U.S. law is the civil rights law for people with disabilities. It serves people with disabilities in a practical way, while the Chinese law, to a large extent, is welfare legislation. It is not a rights-based law. The fundamental issues that Chinese people with disabilities faced historically still exist. There is no accessibility, no accommodation. They still suffer discrimination at work, at school, and in everyday lives with no effective ways to seek relief. China needs to make its law workable in a practical way to serve Chinese people with disabilities, so that people with disabilities can use it in court to protect themselves and to fight for their fundamental human rights. Until that happens, we will continue to see no litigation cases under the Chinese law.

To make the Chinese law serve its purpose is a gigantic task. Without trying to legislate for China, the following can serve as the core of the suggestions for the law's future revision or amendment:

1. Disability is a human rights issue. People with disabilities shall be regarded as subjects with human rights not as objects of welfare. Individual rights to equal treatment need to be addressed comprehensively and shall be the dominant-thread

throughout the law. What constitutes discrimination needs to be clearly spelled out, with lists of specific kinds of actions considered discriminatory. Anti-discrimination provisions need to be central in the new legislation.

2. Create effective enforcement mechanisms with legal assistance in which people with disabilities assume important roles. Work out a variety of enforcement strategies, including training programs at all levels and available technical assistance. Create an enabling and empowering environment for people with disabilities to fight for their own rights.

3. Mandate accessibility for all new buildings. Accessibility needs to be clearly stated as an individual right. This is critical, especially because China will host the 2008 Olympic games and so many people with disabilities from all over the world will come to Beijing.

4. Mandate reasonable accommodation at work places for employees with disabilities. This also needs to be expressed as an individual right. The government agencies, various service providers, employers, and all other entities that have duties under “reasonable accommodation” mandate must commit to and follow through the course of action.

5. Take the physical standard out of the National Higher Education Enrollment guidelines. Abolish the provincial government’s leeway in compliance. It is the national law. No one shall violate it.

6. Mandate accommodation for students with disabilities in all educational settings.

7. Mandate free, appropriate public education to all students with disabilities, regardless of the severity and nature of their disability.

8. Children with disabilities should be educated in regular education settings with non-disabled peers to the maximum extent possible.

9. Children with disabilities must be educated in the least restrictive environment (LRE).

As a rising economic and political power in the world and the permanent U.N Security Council member, China has the obligation to demonstrate to the world that it is capable of positively confronting the disability issue. Near the end of the “United Nations Decade of Disabled Persons”(1983-1992), the world saw the Law of the People’s Republic China on the Protection of Disabled Persons come to being. Now at the beginning of the Asian and Pacific Decade of Disabled Persons (2003-2012), the world wants to witness China moving toward an inclusive, barrier-free, and rights-based society, so that people with disabilities in China can have real hope that the disability law will finally achieve ideals of human rights and structural equality

REFERENCES

- B. v. Cronin, 542 F. Supp. 102 (N.D. Ill. 1980)
- Bentivegna v. United States Dept. of Labor, 694 F. 2d 619 (1982)
- Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982)
- Brookhart v. Illinois State Board of Education, 697 F. 2d 179 (7th Cir. 1983)
- Carter v. Casa Cent., 849 F.2d 1048 (7th Cir.1988)
- Casey v. Lewis, 773 F. Supp. 1365 (D. Ariz. 1991)
- Cherry v. Matthews, 419 F. Supp. 922 (D. Col. 1976)
- Chiari v. City of League City, 920 F.2d 311 (5th Cir. 1991)
- Civil Right Acts (1964)
- Clyde v. Puyallup School District, 35 F. 3d 1396 (9th Cir. 1994)
- Code of Federal Regulation 45 C.F.R. (1977)
- Darlene L. v. Illinois State Board of Education, 568 F. Supp. 1340 (N.D. Ill. 1983)
- Davis v. Bucher, 451 F. Supp. 791 (E.D. Pa. 1978)
- Department of Education v. D., 531 F. Supp 517 (D. C. Hawaii 1982)
- Doe v. New York University, 442 F. Supp. 522 (S.D. N.Y. 1978)
- Duran v. Tampa, 430 F. Supp. 75 (M.D. Fla. 1977)
- Garrity v. Gallen, 522 F. Supp. 171 (D.C. N.H. 1981)
- Georgia Association of Retarded Citizens v. McDaniel, 716 F. 2d 1565 (11th Cir. 1983)
- Grube v. Bethlehem School District, 550 F. Supp. 418 (E.D. Pa. 1982)

Halderman v. Pennhurst State School & Hospital, 446 F. Supp. 1295 (E.D. Pa. 1978)

Hairston v. Drosick, 423 F. Supp. 180 (S.D. W. Va. 1976)

Hurry v. Jones, 560 F. Supp. 500 (D.C. R.I. 1983)

International Disability Rights Monitor (2003)

Irving Independent School District v. Tatro, 468 U.S. 883 (1984)

J. v. Pealand Independent School Dist., 520 F. Supp. 869 (S.D. Tex. 1981)

Johnston v. Ann Arbor Public Schools, 569 F. Supp. 1502 (E.D. Mich. 1983)

Jonathan v. Caddo Parish School Board, 875 F. Supp. 352 (D.C. La. 1994)

Kampmeier v. Nyquist, 553 F.2d 296 (2d Cir.1977)

Law of the People's Republic of China on the Protection of Disabled Persons (1990)

Lincoln Cerpac v. Health and Hosp. Corp., 977 F. Supp. 274 (S.D. N.Y. 1997)

Lora v. Board of Education, 456 F. Supp. 1211 (E.D. N.Y.)

Marvin H. v. Austin Independent School System, 723 F. 2d 432 (5th Cir. 1984)

Mills v. Board of Education of the District of Columbia, 348 F. Supp.866 (D.C. 1972)

M.R. v. Milwaukee Public Schools, 495 F. Supp. 864 (E.D. Wis.)

NAACP v. Wilmington Medical Center, Inc., 426 F. Supp. 919 (D.C. Del. 1977)

Parks v. Pavkovic, 753 F. 2d 1397 (7th Cir. 1985)

Pennhurst State School & Hospital v. Halderman, 451 U.S. 1 (1981)

Pennsylvania Assoc. for Retarded Citizens v. Pennsylvania, 343 F. Supp. 279 (Pa. 1972)

People First v. Arlington Development Ctr., 878 F. Supp. 97 (W.D. Tenn. 1992)

Pesterfield v. Tennessee Valley Authority, 941 F.2d 437 (6th Cir.1991)

Pinkerton v. Moye, 509 F. Supp. 107 (W.D. Va. 1981)

Polera v. Bd Ed. Newburgh City Sch. Dist., 288 F.3d 478 (2nd Cir. 2002)

Rehabilitating Section 504 (2003) National Council on Disability

Rodgers v. Magnet Cove Public Schools, 34 F. 3d 642, 645 (8th Cir. 1994)

Rogers v. Frito Lay, Ins., 433 F. Supp. 200 (N.D. Tex. 1977)

Rosenthal, E. (2001). College Entrance in China: 'No' to the Handicapped. *The New York Times International*.

School Board of Nassau County v. Arline, 480 U.S. 273, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1986).

Section 504 of Rehabilitation Act (1973)

Smith v. Robinson, 468 U.S. 992, 104 S.Ct.3457, 82 L.Ed.2d 746 (1984)

South Dakota v. Dole, 483 U.S. 203 (1987)

Southeastern Community College v. Davis, 442 U.S. 397, 99 S. Ct 2361 (1979)

Steward Machine Co., v. Davis, 301 U.S. 548 (1937)

Tatro v. Texas, 703 F. 2d 823 (5th Cir. 1983), 741 F. 2d 82 (5th Cir.)

Thomas v. Atascadero Unified School District, 662 F. Supp. 376 (D.C. Ca. 1987)

United States v. Butler, 297 U.S. 1 (1936)

United States Constitution

U.S. Code and Congressional News (1973)

USDOE 34 C.F.R. § 104.33 (b) (1) (1991)

Walfish, D. (2001). China Bars Students with Disabilities From Various Academic Programs. *Daily News. The Chronicle of Higher Education*.

W.B. v. Matula, 63 F. 3d 484 (3rd Cir.1995)

Wood v. Omaha School Dist., 985 F. 2d 437 (8th Cir. 1993)

APPENDIX A
SECTION 504 IN ENGLISH

SECTION 504, REHABILITATION ACT OF 1973

Section 794. Nondiscrimination under Federal grants and programs; promulgation of rules and regulations***(a) Promulgation of rules and regulations***

No otherwise qualified individual with a disability in the United States, as defined in section 706 (20) of this title, shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of any proposed regulations shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date of which such regulation is so submitted to such committees.

(b) “Program or activity” defined

For the purpose of this section, the term “program or activity” means all of the operations of –

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

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

(B) a local educational agency (as defined in section 8801 of Title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

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

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

(B) 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 (1), (2) or (3); any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the service is available. The terms used in this

subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards use to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of Section 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections related to employment.

(The Text of The Law Is From U.S. Department of Labor Website.)

APPENDIX B
CHINESE LAW IN ENGLISH

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROTECTION OF
DISABLED PERSONS

CONTENTS

Chapter I General Provisions

Chapter II Rehabilitation

Chapter III Education

Chapter IV Employment

Chapter V Cultural Life

Chapter VI Welfare

Chapter VII Environment

Chapter VIII Legal Liability

Chapter IX Supplementary Provisions

CHAPTER I

GENERAL PROVISIONS

Article 1. (Purpose and Basis)

This law is formulated in accordance with the Constitution for the purpose of protecting the lawful rights and interests of, and developing undertakings for, disabled persons, and

ensuring their equal and full participation in social life and their share of the material and cultural wealth of society.

Article 2. (Definition, Categories and Criteria)

A disabled person is a person who suffers from abnormalities or loss of certain organ or function, psychologically or physiologically, or in anatomical structure and had lost wholly or in part the ability to perform an activity in the way considered normal.

The term “disabled persons” refers to those with visual, hearing, speech or physical disabilities, intellectual disability, mental disorder, multiple disabilities and/or other disabilities.

The State Council shall establish the criteria for classification of disabilities.

Article 3. (Protection of Rights)

Disabled persons shall enjoy, on an equal basis with other citizens, rights in political, economic, cultural and social fields, in family life and other aspects.

The citizenship rights and personal dignity of disabled persons shall be protected by the law.

Discrimination against and insult of disabled persons and commission of harmful acts against disabled persons shall be prohibited.

Article 4. (Special Assistance)

The state shall provide disabled persons with special assistance by adopting supplementary methods and supportive measures, with a view to alleviating or

eliminating the effects of their disabilities, as well as removing social and environmental barriers and ensuring the fulfillment of their rights.

Article 5. (Special Assurance)

The state and society shall provide special assurance, preferential treatment and pensions for wounded or disabled military personnel, as well as persons disabled while on duty or while protecting the interests of the state and people.

Article 6. (Responsibilities and Government)

The people's governments at all levels shall incorporate undertakings for disabled persons into plans for economic and social development through budgetary allocations, overall planning and coordination and other measures under strengthened leadership, with a view to ensuring that undertakings for disabled persons develop in coordination with economic and social progress.

The State Council and the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall adopt organizational measures to coordinate the concerned departments on the work for people with disabilities. The establishment of specific institutions shall be decided upon by the State Council and/or the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

The concerned departments under the people's government at various levels shall keep in close contact with disabled persons, solicit their opinions and fulfill respectively their own duties in the work for disabled persons.

Article 7. (Responsibilities of Society)

The whole society should display socialist humanitarianism, understand, respect, as well as care for, assist persons with disabilities, and support the work for persons with disabilities.

State organs, non-governmental organizations, enterprises, institutions and urban and rural organizations at grassroots level should do their work for disabled persons well, as is within their responsibility.

State functionaries and other personnel engaged in the work for disabled persons should work hard to fulfill their lofty duties in serving disabled persons.

Article 8. (Responsibilities of Disabled Persons' Federation)

The China Disabled Person's Federation (CDPF) and its local branches shall represent the common interests of disabled persons, protect their lawful rights and interests, unite and educate disabled persons, as well as provide service for disabled persons.

CDPF shall undertake tasks entrusted by the government, conduct work for disabled persons and mobilize social forces in developing undertakings for disabled persons.

Article 9. (Responsibilities of Fosterer, Guardian and Family Member)

Legal caregivers of disabled persons must fulfill their duties towards their charges.

Guardians of disabled persons must fulfill their duties of guardianship and protect the lawful rights and interests of their charges.

Family members and guardians of disabled persons should encourage and assist disabled persons to enhance their capability of self-reliance.

Maltreatment and abandoning of disabled persons shall be prohibited.

Article 10. (Obligations of Disabled Persons)

Disabled persons must abide by laws, carry out their due obligations, observe public order and respect social morality.

Disabled persons should display an optimistic and enterprising spirit, have a sense of self-respect, self-confidence, self-strength and self-reliance, and make contributions to socialist construction.

Article 11. (Prevention of Disabilities)

The state shall undertake, in a planned way, the work of disability prevention, strengthen leadership in this regard, publicize and popularize knowledge of good pre-natal and post-natal care as well as disability prevention, formulate laws and regulations dealing with disability causing factors such as heredity, disease, medical poisoning, accidents, calamity and environmental pollution and adopt measures to prevent the occurrence and aggravation of disabilities by organizing and mobilizing social forces.

Article 12. (Award)

Government and the concerned departments shall award those disabled persons who have made notable achievements in socialist construction and those units or individuals who

have made remarkable contributions to safeguarding the lawful rights and interests of disabled people, promoting undertakings and providing service for disabled persons.

CHAPTER II

REHABILITATION

Article 13. (Responsibilities)

The state and society shall adopt measures of rehabilitation to help disabled persons regain normal functions or compensate for lost functions, thus enhancing their ability to participate in social life.

Article 14. (Guiding Principal)

The work of rehabilitation shall, proceeding from the actual conditions, combine modern rehabilitation techniques with traditional Chinese techniques, with rehabilitation institutions as the core and community-based rehabilitation as the basis, and relying on the families of disabled persons for support. Emphasis shall be laid on rehabilitation projects which are practical, easy to realize and widely beneficial. Efforts shall also be made in research, exploration and application of new rehabilitation technology so as to provide more effective rehabilitation service for disabled persons.

Article 15. (Implementation)

Government and the concerned departments shall establish, in a planned way, medical rehabilitation departments (sections) in hospitals, set up appropriate special institutions of

rehabilitation and carry out clinical practice and training, scientific research, personnel training and work of technical guidance in the field of rehabilitation.

The people's government at various levels and concerned departments should organize and guide urban and rural community service networks, medical prevention and health care networks, organizations and families of disabled persons and other social forces in carrying out community-based rehabilitation work.

Departments of education, welfare enterprises and institutions and other service organizations for disabled persons should create conditions for rehabilitation training activities.

Disabled persons, with guidance from professional personnel and help from relevant staff, volunteers and family members, should actively take part in training programs for functional recovery, and the development of self-care ability and work skills.

The State Council and concerned departments shall determine priority rehabilitation projects by stages, formulate plans thereof and organize forces for their implementation.

Article 16. (Personnel Training)

Medical colleges and schools and other relevant educational institutions should, in a planned way, offer curricula and specialties on rehabilitation so as to train various kinds of rehabilitation specialists.

The state and society shall provide various forms of technical training for personnel engaged in rehabilitation work, popularize knowledge of rehabilitation among disabled persons, their family members, relevant staff and volunteers and teach them methods of rehabilitation.

Article 17. (Assistive Devices)

The concerned governmental departments should organize and support the research, production, supply and maintenance of rehabilitation equipment, assistive devices for self-reliance, as well as special and other assistive devices for persons with disabilities.

CHAPTER III

EDUCATION

Article 18. (Responsibilities)

The state shall guarantee the right of disabled persons to education.

The people's government at various levels should make the education of disabled persons a component of the state education programme, include it in their overall planning and strengthen leadership in this respect.

The state, society, schools and families shall provide compulsory education for disabled children and juveniles.

The state shall exempt disabled students who accept compulsory education from tuition and reduce sundry fees or exempt them from such fees according to actual situations. The state shall set up grant-in-aid to assist students who are poor and disabled.

Article 19. (Education According to Different Characteristics)

The education of disabled persons shall be carried out according to their physical and psychological characteristics and needs and shall meet the following requirements:

(1) Strengthen physical and psychological compensation and vocational and technical training while providing ideological and cultural education;

- (2) Adopt normal or special methods of education according to different categories of disabilities and varied abilities of response; and
- (3) The curricula, teaching materials and methods for special education and the age requirement for admission and schooling may be determined with appropriate flexibility.

Article 20. (Principle of Development)

The principle of combining popularization with upgrading of quality shall be implemented in the education of disabled persons, with emphasis on the former. Priority shall be given to compulsory education and vocational and technical education, while efforts shall be made to carry out preschool education and gradually develop education at or above the senior middle school level.

Article 21. (Channels of Education)

The state shall set up education institutions for disabled persons and encourage social forces to run schools and donate funds for schools.

Article 22. (Methods of Ordinary Education)

Ordinary education institutions shall provide education for disabled persons who are able to receive ordinary education.

Ordinary primary schools and junior middle schools must admit disabled children or juveniles who are able to adapt themselves to life and study there; ordinary senior middle schools, secondary polytechnic schools, technical schools and institutions of higher learning must admit disabled students who meet the state admission requirements and

shall not deny their admission because of their disabilities; in case of such denial, the disabled students, their family members or guardians may appeal to the relevant authorities for disposition. The relevant authorities shall instruct the schools concerned to enroll the students.

Ordinary institutions of preschool education shall admit disabled children who are able to adapt themselves to the life there.

Article 23. (Methods of Special Education)

Preschool education institutions for disabled children, classes for disabled children attached to ordinary preschool education institutions, preschool classes of special education schools, welfare institutions for disabled children and families of disabled children shall be responsible for the preschool education of disabled children.

Special schools at or below junior middle school level and special classes attached to ordinary schools shall be responsible for the implementation of compulsory education for disabled children and juveniles who are not able to respond to ordinary education.

Special schools and special classes attached to ordinary schools at or above senior middle school level as well as institutions of vocational and technical education for disabled persons shall be responsible for providing cultural education at or above senior middle school level and vocational and technical education for eligible disabled persons.

Article 24. (Adult Education)

The concerned governmental departments, units where disabled persons work and society in general shall carry out literacy promotion, vocational training and other forms of adult

education among disabled persons and encourage them to tap their talents in the self-taught way.

Article 25. (Teaching Staff)

The state shall systematically set up various forms of teachers' schools and specialties for special education at different levels and special education classes (departments) attached to ordinary teachers' schools to educate and train teaching staff for special education. Ordinary teachers' schools shall offer curricula or lectures on special education so that teachers in ordinary education may have basic knowledge of special education.

Teachers of special education and sign language interpreters shall enjoy allowances for special education.

Article 26. (Auxiliary Means)

The concerned governmental departments shall organize and support the research and application of Braille and sign language, the compilation, writing and publication of special education teaching materials and the research, production and supply of teaching apparatus and other auxiliary facilities for special education.

CHAPTER IV

EMPLOYMENT

Article 27. (Responsibilities)

The state protects disabled persons' right to work.

The people's government at various levels shall formulate overall plans on the employment of disabled persons and create conditions for their employment.

Article 28. (Guiding Principles)

The employment of disabled persons shall follow the principle of combining concentrated job placement with dispersed job placement. Preferential policies and measures of support and protection shall be adopted with a view to gradually popularizing, stabilizing and rationalizing employment of disabled persons through multiple channels, at various levels and in a variety of forms.

Article 29. (Concentrated Employment)

The state and society shall set up welfare enterprises for disabled persons, workers sanatoria, massage therapy centers and other enterprises and institutions of welfare nature as a way of providing concentrated employment for disabled persons.

Article 30. (Dispersed Employment)

The state shall promote the employment of disabled persons by various units. The people's government at all levels and concerned departments should organize and provide guidance in this regard. State organs, non-governmental organizations, enterprises, institutions and urban and rural collective economic organizations should employ a certain proportion of disabled persons in appropriate types of jobs and posts. The specific ration may be determined by the people's government of provinces,

autonomous regions and municipalities directly under the Central Government and in line with the actual conditions.

Article 31. (Self-employment)

The concerned governmental departments shall encourage and assist disabled persons to obtain employment through voluntary organizations or to embark on self-employment ventures.

Article 32. (Rural Labor)

The local people's government at various levels and rural grassroots organizations should organize and support disabled persons in the rural areas to engage in farming, horticulture, animal husbandry, as well as handicraft and other forms of production.

Article 33. (Preferential Treatment and Assistance)

The state shall implement the policy of tax reduction or exemption in relation to welfare enterprises and institutions for disabled persons and self-employed disabled workers in urban and rural areas, and provide assistance in production, management, technology, capital, supply of materials, work sites and other aspects.

The local people's government and the concerned departments shall determine the types of products suitable for production by disabled persons, give priority to welfare enterprises for disabled persons to produce such products and gradually determine which products are to be produced exclusively by such enterprises.

The concerned governmental departments shall, in determining the quota for recruiting and employing workers and staff members, allot a certain proportion of the quota to disabled persons.

The concerned departments shall, in verifying and issuing business licenses, give priority to disabled persons who apply for licenses as self-employed workers or entrepreneurs and give them preferential treatment in allotting work sites and loans, and in other way.

The concerned departments shall provide assistance for disabled persons engaged in various kinds of labor in the rural areas by way of production services, technical guidance, supply of materials for agricultural use, marketing of farm and sideline products, as well as loans.

Article 34. (Protection)

The state shall protect the property ownership and managerial decision-making power of welfare enterprises and institutions for disabled persons, whose lawful rights and interests shall not be violated.

No discrimination shall be practiced against disabled persons in recruitment, employment, granting of permanent employee status, promotion, determining technical or professional titles, payment, welfare, labor insurance or in other aspects.

No enterprises or institutions shall deny employment to graduates assigned by the state from institutions of higher learning, polytechnic schools or technical schools solely on the ground of their disabilities; in case of such denial, the disabled graduates may appeal to the concerned departments for disposition, and the relevant departments shall instruct the concerned enterprises or institutions to accept the said graduates.

Enterprises and institutions where disabled persons work shall provide the disabled workers with appropriate working conditions and labor protection.

Article 35. (Training of Employees)

Enterprises and institutions where disabled persons work shall provide in-service technical training for disabled employees, with a view to upgrading their skills and techniques.

CHAPTER V

CULTURAL LIFE

Article 36. (Responsibilities)

The state and society shall encourage disabled persons and assist them in participating in various forms of cultural, sports and recreational activities, and work to meet the needs of disabled persons concerning their spiritual and cultural life.

Article 37. (Guiding Principles)

Cultural, sports and recreational activities for disabled persons should be oriented towards grassroots levels, integrated in public cultural life and geared to the different characteristics and needs of different categories of disabled persons, with a view to bringing about their extensive participation.

Article 38. (Measures)

The state and society shall adopt the following measures to enrich the spiritual and cultural life of disabled persons

(1) Reflect the life of disabled persons through radio, film, television, press and periodicals and other media in the interests of disabled persons.

(2) Organize and support the compilation, writing and publication of Braille books, talking books for blind persons and reading materials for deaf and intellectually disabled persons; offer TV programs in sign language and insert subtitles or narration, as appropriate, in films and TV programs.

(3) Organize and support disabled persons for their participation in mass cultural, sports and recreational activities, special arts performances, as well as hold special sports meets and support their participation in major international sports, games and related exchanges; and

(4) Provide facilities and accommodations for disabled persons at places of cultural, sports, recreational and other public activities and set up, in a planned way, activity centers for disabled persons.

Article 39. (Encouraging Creative Activities)

The state and society shall encourage and assist disabled persons to engage in literature, art, education, science, technology and other creative work beneficial to the public at large.

CHAPTER VI

WELFARE

Article 40. (Responsibilities)

The state and society shall adopt supportive, relief and other welfare measures to secure and improve the life of disabled persons.

Article 41. (Relief and Care)

The state and society shall provide relief and subsidies through various channels for disabled persons with real financial difficulties.

The state and society shall foster and provide relief, in accordance with relevant regulations, to disabled persons without work capabilities, or legal fosterer, or financial resource.

Article 42. (Insurance)

Units where disabled persons work, urban and rural grassroots organizations and families of disabled persons should encourage and assist disabled persons to join social insurance.

Article 43. (Welfare and Placement)

The people's government at various levels and the society shall establish welfare centers and other placement and foster institutions, settle and foster disabled persons in accordance with relevant regulations and gradually improve their living standards.

Article 44. (Preferential Treatment and Accommodations)

Agencies of public services shall provide preferential and auxiliary services to disabled persons.

In taking public transport vehicles, disabled persons shall be given convenience and special consideration; they shall be permitted to carry on board their indispensable and auxiliary facilities free of charge.

Blind persons may use local buses, trolley buses, subways and ferries free of charge.

Mailing and delivery of publications for blind persons shall be free of charge.

People's governments at county and township levels shall, in line with actual conditions, reduce or exempt disabled persons in rural areas from obligatory labor, public utilities fees and other social obligations.

People's governments at various levels shall gradually increase their care of and support for people with disabilities.

CHAPTER VII

ENVIRONMENT

Article 45. (Responsibilities)

The state and society shall gradually create a sound environment for improving the conditions for disabled persons to participate in social life.

Article 46. (Barrier-free Facilities)

The state and society shall gradually regulate the Design Code for the Accessibility of

Disabled Persons to Urban Roads and Buildings and adopt barrier-free measures.

Article 47. (Mutual Understanding and Assistance)

The state and society shall promote mutual understanding and exchanges between disabled persons and other citizens, publicize undertakings concerning disabled persons, and deeds of assisting disabled persons, promote disabled persons' spirit of determination and perseverance, as well as foster a social environment of solidarity, mutual caring and assistance.

Article 48. (National Day of Assisting Disabled Persons)

The third Sunday of May each year shall be observed as the National Day of Assisting Disabled Persons.

CHAPTER VIII

LEGAL LIABILITY

Article 49. (Appeal and Prosecution)

Where the lawful rights and interests of disabled persons are violated, the offended persons or their agents shall have the rights to appeal to the competent authorities for disposition, or institute lawsuits in people's courts, in accordance with the law.

Article 50. (Administrative Liability)

Where government functionaries neglect their duties, in violation of the law, and infringe upon the lawful rights and interests of disabled persons, the units to which they belong or their higher authorities shall instruct such persons to correct their wrongdoings or subject them to administrative sanctions.

Article 51. (Civil Liability)

Whoever infringes upon the lawful rights and interests of a disabled person and causes property or other losses or damage shall compensate for the losses or damage according to the law or bear other civil liabilities.

Article 52. (Administrative Punishment and Criminal Liability)

Whoever infringes upon the right of person or other lawful rights of disabled persons by taking advantage of their disabilities, and which constitutes a crime, shall be given heavier punishment, in accordance with the relevant provisions of the Criminal Law.

Whoever, by violence or other means, publicly insults disabled persons, shall, if the circumstances are serious, be investigated for criminal responsibility, in accordance with the provisions of Article 145 of the Criminal Law, and, if the circumstances are less serious, be subject to punishment, in accordance with the provisions of Article 22 of the Regulations on Administrative Penalties for Public Security.

Whoever maltreats disabled persons shall be punished in accordance with the provisions of Article 22 of the Regulations on Administrative Penalties for Public Security; and, if the circumstances are flagrant, he/she shall be investigated for criminal responsibility, in accordance with the provisions of Article 182 of the Criminal Law.

Whoever refuses to perform his/her legal duty of providing care for a disabled person who is unable to live independently, shall, if the circumstances are flagrant, or if he/she abandons such a disabled person, be investigated for criminal responsibility, in accordance with the provisions of Article 183 of the Criminal Law.

Whoever rapes a disabled person who is unable to account for her own conduct due to intellectual disability or mental disorder shall be deemed to have committed rape and shall be investigated for criminal responsibility, in accordance with the provisions of Article 139 of the Criminal Law.

CHAPTER IV

SUPPLEMENTARY PROVISIONS

Article 53. (Regulations and Local Statutes)

The concerned departments under the State Council shall formulate relevant regulations in accordance with this law and submit them to the State Council for approval before implementation.

The standing committees of the people's congress of provinces, autonomous regions and municipalities directly under the Central Government may formulate measures of implementation in accordance with this law.

Article 54. (Entry into Force)

This law shall enter into force as of May 15, 1991.

(The English Version Of The Law Is From The Chinese Disabled Persons Federation.)

APPENDIX C
SECTION 504 IN CHINESE

1973 年康复法，504 条款

第 794 条，联邦资金和项目禁止歧视现象；规则和条款的公布

(a) 规则和条例

在美国，凡接受联邦财政资助的项目或活动，联邦执行机构或邮政部门，应接受合格的残疾人的参与，并提供给他们福利不能仅仅因为残疾的原因而歧视他们。

为了执行 1978 年康复、综合服务和发展残疾法对这一节的修正案，上述各机构或部门的负责人应公布相关规则并提交国会相关的审批委员会。这些规则应在提交的三十天之后开始生效。

(b) “项目或活动” 定义

为陈述和理解的方便，“项目或活动” 指的是以下机构的所有运作：

(1) (A) 州或地方政府的部门、机构、特别区域或其它附属政府部门

(B) 发动和接受联邦资助的州或地方政府机构

(2) (A) 大专院校或公共高校等教育系统

(B) 地方教育机构，职业教育系统或其它学校系统

(3) (A) (i) 接受联邦财政资助的大公司，合作伙伴，其它私营盈利组织或小企业体。

(ii) 主要从事教育、卫生健康、房产、社会服务或公园娱乐的大公司、合作或伙伴，其它私营盈利组织或小企业体。

在以上所指的公司，合作伙伴，私营盈利组织或小企业体中，接受联邦资助的工厂

或规模相当，地理位置分布分散的厂房

(4) 在(1)、(2)或(3)段落中所陈述的两个或两个以上的独立体建立的独立体，任何其中之一接受联邦财政资助

(c) 小型服务提供者所作的重大建筑结构的改变

如果有其它提供服务的途径，小节(a)并不要求小型服务提供者为保证项目的通行对现有的建筑作结构上的重大改变。本小节使用的术语应该参考1988年3月22日的规则一同理解。

(d) 衡量是否违反504条款的准则

在指控就业歧视的申述中，衡量是否违反504条款的准则应当是1990年美国残疾人法第一条款中所用的准则及1990年美国残疾人法501至504和510条款中与就业有关的规定

(This Chinese Version Is Translated By Huayin Liu)

APPENDIX D

CHINESE LAW IN CHINESE

中华人民共和国残疾人保障法

1990 年 12 月 28 日第七届全国人民代表大会常务团员会第十七次会议通过

目录

第一章 总 则

第二章 康 复

第三章 教 育

第四章 劳动就业

第五章 文化生活

第六章 福 利

第七章 环 境

第八章 法律责任

第九章 附 则

第一章 总 则

第一条[宗旨与依据]

为了维护残疾人的合法权益，发展残疾人事业，保障残疾人平等地充分参与社会生活，共享社会物质文化成果，根据宪法，制定本法。

第二条[定义、类别、标准]

残疾人是指在心理、生理、人体结构上，某种组织、功能丧失或者不正常，全部或者部分丧失以正常方式从事某种活动能力的人。

残疾人包括视力残疾、听力残疾、言语残疾、肢体残疾、智力残疾、精神残疾、多重残疾和其他残疾的人。残疾标准由国务院规定。

第三条[权利保护]

残疾人在政治、经济、文化、社会和家庭生活等方面享有同其他公民平等的权利。

残疾人的公民权利和人格尊严受法律保护。禁止歧视、侮辱、侵害残疾人。

第四条[特别扶助]

国家采取辅助方法和扶持措施，对残疾人给予特别扶助，减轻或者消除残疾影响和外界障碍，保障残疾人权利的实现。

第五条[特别保障]

国家和社会对伤残军人、因公致残人员以及其他为维护国家和人民利益致残的人员实行特别保障，给予优待和抚恤。

第六条[政府职责]

各级人民政府应当将残疾人事业纳入国民经济和社会发展规划，经费列入财政预算，统筹规划，加强领导，综合协调，采取措施，使残疾人事业与经济、社会协调发展。

国务院和省、自治区、直辖市人民政府，采取组织措施，协调有关部门做好残疾人事业的工作。具体机构由国务院和省、自治区、直辖市人民政府规定。

各级人民政府有关部门，应当密切联系残疾人，听取残疾人的意见，按照各自的职责，做好残疾人工作。

第七条[社会责任]

全社会应当发扬社会主义的人道主义精神，理解、尊重、关心、帮助残疾人，支持残疾人事业。

机关、团体、企业事业组织和城乡基层组织，应当做好所属范围内的残疾人工作。从事残疾人工作的国家工作人员和其他人员，应当履行光荣职责，努力为残疾人服务。

第八条[残疾人联合会职责]

中国残疾人联合会及其地方组织，代表残疾人的共同利益，维护残疾人的合法权益，团结教育残疾人，为残疾人服务。

残疾人联合会承担政府委托的任务，开展残疾人工作，动员社会力量，发展残疾人事业。

第九条[扶养人、监护人、亲属责任]

残疾人的法定扶养人必须对残疾人履行扶养义务。残疾人的监护人必须履行监护职责，维护被监护人的合法权益。残疾人的亲属、监护人应当鼓励和帮助残疾人增强自立能力。禁止虐待和遗弃残疾人。

第十条[残疾人义务]

残疾人必须遵守法律，履行应尽的义务，遵守公共秩序，尊重社会公德。残疾人应当发扬乐观进取精神，自尊、自信、自强、自立，为社会主义建设贡献力量。

第十一条[残疾预防]

国家有计划地开展残疾预防工作，加强对残疾预防工作的领导，宣传、普及优生优育和预防残疾的知识，针对遗传、疾病、药物中毒、事故、灾害、环境污染和其他致残因素，制定法律、法规，组织和动员社会力量，采取措施，预防残疾的发生和发展。

第十二条 [奖励]

对在社会主义建设中做出显著成绩的残疾人，对维护残疾人合法权益、发展残疾人事业、为残疾人服务做出显著成绩的单位和个人，由政府 and 有关部门给予奖励。

第二章 康 复

第十三条 [职责]

国家和社会采取康复措施，帮助残疾人恢复或者补偿功能，增强其参与社会生活的能力。

第十四条 [指导原则]

康复工作应当从实际出发，将现代康复技术与我国传统康复技术相结合；以康复机构为骨干，社区康复为基础，残疾人家庭为依托，以实用、易行、受益广的康复内容为重点，并开展康复新技术的研究、开发和应用，为残疾人提供有效的康复服务。

第十五条 [组织实施]

政府和有关部门有计划地在医院设立康复医学科(室)，举办必要的专门康复机构，开展康复医疗与训练、科学研究、人员培训和技术指导工作。各级人民政府和有关部门，应当组织和指导城乡社区服务网、医疗预防保健网、残疾人组织、残疾人家庭和其他社会力量，开展社区康复工作。

残疾人教育机构、福利性企业事业组织和其他为残疾人服务的机构，应当创造条件，开展康复训练活动。残疾人在专业人员的指导和有关工作人员、志愿工作者及亲属的帮助

下，应当努力进行功能、自理能力和劳动技能的训练。国务院和有关部门分阶段确定康复重点项目，制定计划，组织力量实施。

第十六条〔人员培养〕

医学院校和其他有关院校应当有计划地开设康复课程。设置康复专业，培养各类康复专业人才：国家和社会采取多种形式对从事康复工作的人员进行技术培训，向残疾人、残疾人亲属、有关工作人员和志愿工作者普及康复知识，传授康复方法。

第十七条〔器具〕

政府有关部门应当组织和扶持残疾人康复器械、生活自助具、特殊用品和其他辅助器具的研制生产、供应、维修服务。

第三章 教 育

第十八条〔职责〕

国家保障残疾人受教育的权利。各级人民政府应当将残疾人教育作为国家教育事业的组成部分，统一规划，加强领导。国家、社会、学校和家庭对残疾儿童、少年实施义务教育。国家对接受义务教育的残疾学生免收学费，并根据实际情况减免杂费。国家设立助学金，帮助贫困残疾学生就学。

第十九条〔依特性施教〕

残疾人教育，根据残疾人的身心特性和需要，按照下列要求实施：（一）在进行思想教育、文化教育的同时，加强身心补偿和职业技术教育；（二）依据残疾类别和接受能力，采取普通教育方式或者特殊教育方式；（三）特殊教育的课程设置、教材、教学方法、入学和在校年龄，可以有适度弹性。

第二十条〔发展方针〕

残疾人教育，实行普及与提高相结合、以普及为重点的方针，着重发展义务教育和职业技术教育，积极开展学前教育。逐步发展高级中等以上教育。

第二十一条 [办学渠道]

国家举办残疾人教育机构，并鼓励社会力量办学，捐资助学。

第二十二条 [普通教育方式]

普通教育机构对具有接受普通教育能力的残疾人实施教育。普通小学、初级中等学校，必须招收能适应其学习生活的残疾儿童、少年入学；普通高级中等学校、中等专业学校、技工学校和高等院校，必需招收符合国家规定的录取标准的残疾考生入学，不得因其残疾而拒绝招收；拒绝招收的，当事人或者其亲属、监护人可以要求有关部门处理，有关部门应当责令该学校招收。普通幼儿教育机构应当接收能适应其生活的残疾幼儿。

第二十三条 [特殊教育方式]

残疾幼儿教育机构、普通幼儿教育机构附设的残疾儿童班、特殊教育学校的学前班、残疾儿童福利机构、残疾儿童家庭，对残疾儿童实施学前教育。初级中等以下特殊教育学校和普通学校附设的特殊教育班，对不具有接受普通教育能力的残疾儿童、少年实施义务教育。高级中等以上特殊教育学校、普通学校附设的特殊教育班和残疾人职业技术教育机构，对符合条件的残疾人实施高级中等以上文化教育、职业技术教育。

第二十四条 [成人教育]

政府有关部门、残疾人所在单位和社会应当对残疾人开展扫除文盲、职业培训和其他成人教育，鼓励残疾人自学成才。

第二十五条 [师资]

国家有计划地举办各级各类特殊教育师范院校、专业，在普通师范院校附设特殊教育班（部），培养、培训特殊教育师资。普通师范院校开设特殊教育课程或者讲授有关内容，使普通教师掌握必要的特殊教育知识。特殊教育教师和手语翻译，享受特殊教育津贴。

第二十六条〔辅助手段〕

政府有关部门应当组织和扶持盲文、手语的研究和应用，特殊教育教材的编写和出版，特殊教育教学用具及其他辅助用品的研制、生产和供应。

第四章 劳动就业

第二十七条〔职责〕

国家保障残疾人劳动的权利。

各级人民政府应当对残疾人劳动就业统筹规划，为残疾人创造劳动就业条件。

第二十八条〔指导方针〕

残疾人劳动就业，实行集中与分散相结合的方针，采取优惠政策和扶持保护措施，通过多渠道、多层次、多种形式使残疾人劳动就业逐步普及、稳定、合理。

第二十九条〔集中安排〕

国家和社会举办残疾人福利企业、工疗机构、按摩医疗机构和其他福利性企业事业组织，集中安排残疾人就业。

第三十条〔分散安排〕

国家推动各单位吸收残疾人就业，各级人民政府和有关部门应当做好组织、指导工作。机关、团体、企业事业组织、城乡集体经济组织应当按一定比例安排残疾人就业，并为其选择适当的工种和岗位。省、自治区、直辖市人民政府可以根据实际情况规定具体比例。

第三十一条 [自谋职业]

政府有关部门鼓励、帮助残疾人自愿组织起来从业或者个体开业。

第三十二条 [农村劳动]

地方各级人民政府和农村基层组织，应当组织和扶持农村残疾人从事种植业、养殖业、手工业和其他形式的生产劳动。

第三十三条 [优惠与扶持]

国家对残疾人福利性企业事业组织和城乡残疾人个体劳动者，实行税收减免政策，并在生产、经营、技术、资金、物资、场地等方面给予扶持。

地方人民政府和有关部门应当确定适合残疾人生产的产品，优先安排残疾人福利企业生产，并逐步确定某些产品由残疾人福利企业专产。

政府有关部门下达职工招用、聘用指标时，应当确定一定数额用于残疾人。

对于申请从事个体工商业的残疾人，有关部门应当优先核发营业执照，并在场地、信贷等方面给予照顾。

对于从事各类生产劳动的农村残疾人，有关部门应当在生产服务、技术指导、农用物资供应、农副产品收购和信贷等方面给予帮助。

第三十四条 [保护]

国家保护残疾人福利性企业事业组织的财产所有权和经营自主权，其合法权益不受侵犯。

在职工的招用、聘用、转正、晋级、职称评定、劳动报酬、生活福利、劳动保险等方面，不得歧视残疾人。

对于国家分配的高等学校、中等专业学校、技工学校的残疾毕业生，有关单位不得因其

残疾而拒绝接收，拒绝接收的，当事人可以要求有关部门处理，有关部门应当责令该单位接收。

残疾职工所在单位应当为残疾职工提供适应其特点的劳动条件和劳动保护。

第三十五条 [职工培训]

残疾职工所在单位应当对残疾职工进行岗位技术培训，提高其劳动技能和技术水平。

第五章 文化生活

第三十六条 [职责]

国家和社会鼓励、帮助残疾人参加各种文化、体育、娱乐活动，努力满足残疾人精神文化生活的需要。

第三十七条 [指导原则]

残疾人文化、体育、娱乐活动应当面向基层，融于社会公共文化生活，适应各类残疾人的不同特点和需要，使残疾人广泛参与。

第三十八条 [措施]

国家和社会采取下列措施，丰富残疾人的精神文化生活：

- (一) 通过广播、电影、电视、报刊、图书等形式，反映残疾人生活，为残疾人服务；
- (二) 组织和扶持盲文读物、盲人有声读物、聋人读物、弱智人读物的编写和出版，开办电视手语节目，在部分影视作品中增加字幕、解说；
- (三) 组织和扶持残疾人开展群众性文化、体育、娱乐活动，举办特殊艺术演出和特殊体育运动会，参加重大国际性比赛和交流；
- (四) 文化、体育、娱乐和其他公共活动场所为残疾人提供方便和照顾。有计划地兴办残疾人活动场所。

第三十九条 [鼓励创造]

国家和社会鼓励、帮助残疾人进行文学、艺术、教育、科学、技术和其他有益于人民的创造性劳动。

第六章 福 利

第四十条 [职责]

国家和社会采取扶助、救济和其他福利措施，保障和改善残疾人的生活。

第四十一条 [救济与供养]

国家和社会对生活确有困难的残疾人，通过多种渠道给予救济、补助。

国家和社会对无劳动力的、无法定扶养人、无生活来源的残疾人，按照规定予以供养、救济。

第四十二条 [保险]

残疾人所在单位、城乡基层组织、残疾人家庭，应当鼓励、帮助残疾人参加社会保险。

第四十三条 [福利安养机构]

地方各级人民政府和社会举办福利院和其他安置收养机构，按照规定安置收养残疾人，并逐步改善其生活。

第四十四条 [特别照顾]

公共服务机构应当为残疾人提供优先服务和辅助性服务。残疾人搭乘公共交通工具，应当给予方便和照顾，其随身必备的辅助器具，准予免费携带。盲人可以免费乘坐市内公共汽车、电车、地铁、渡船。盲人读物邮件免费寄递。

县级和乡级人民政府应当根据具体情况减免农村残疾人的义务工、公益事业费和其他社

会负担。

各级人民政府应当逐步增加对残疾人的其他照顾和扶助。

第七章 环 境

第四十五条 [职责]

国家和社会逐步创造良好的环境，改善残疾人参与社会生活的条件。

第四十六条 [无障碍设施]

国家和社会逐步实行方便残疾人的城市道路和建筑物设计规范，采取无障碍措施。

第四十七条 [理解与互助]

国家和社会促进残疾人与其他公民之间的相互理解和交流，宣传残疾人事业和扶助残疾人的事迹，弘扬残疾人自强不息的精神，倡导团结、友爱、互助的社会风尚。

第四十八条 [助残日]

每年 5 月的第三个星期日，为全国助残日

第八章 法律责任

第四十九条 [申诉与起诉]

残疾人的合法权益受到侵害的，被侵害人或者其代理人有权要求有关主管部门处理，或者依法向人民法院提起诉讼。

第五十条 [行政责任]

国家工作人员违法失职，侵害残疾人的合法权益的，由其所在单位或者上级机关责令改正或者给予行政处分。

第五十一条 [民事责任]

侵害残疾人的合法权益，造成财产损失或者其他损失、损害的，应当依法赔偿或者承担其他民事责任。

第五十二条 [行政处罚与刑事责任]

利用残疾人的残疾，侵犯其人身权利或者其他合法权利，构成犯罪的 依照刑法有关规定从重处罚。

以暴力或者其他方法公然侮辱残疾人，情节严重的，依照刑法第一百四十五条的规定追究刑事责任；情节较轻的，依照治安管理处罚条例第二十二的规定处罚。

虐待残疾人的，依照治安管理处罚条例第二十二的规定处罚；情节恶劣的，依照刑法第一百八十二的规定追究刑事责任。

对没有独立生活能力的残疾人负有扶养义务而拒绝扶养、情节恶劣的，或者遗弃没有独立生活能力的残疾人的，依照刑法第一百八十三的规定追究刑事责任。

奸淫因智力残疾或者精神残疾不能辨认自己行为的残疾人的，以强奸论，依照刑法第一百三十九条的规定追究刑事责任。

第九章 附 则

第五十三条 [条例与地方法规]

国务院有关部门根据本法制定有关条例，报国务院批准实施。

省、自治区、直辖市人民代表大会常务委员会可以根据本法制定实施办法。

第五十四条 [生效时间]

本法自 1991 年 5 月 15 日起施行。

- 为便于学习、宣传和贯彻本法，经有关主管部门同意，这里发表的《中华人民共和国残疾人保障法》保留了国务院提请全国人大常委会审议时所带有的条旨。

(The Chinese Version of the Law is from The Chinese Disabled Persons
Federation)