

Catholic School Law Symposium – Meeting Students’ Special Needs

Outline

Goal: Examine the principles and practices for serving students’ special needs in Catholic Schools

I. Principles

A. Learning

B. Ethical

C. Legal

II. Practices

Practices need to be within a systems approach to service delivery:

Learning Consultant Model

A. Applying LCM to classrooms

B. Applying LCM to schools

C. Applying LCM to diocesan systems

Catholic School Law Symposium – Meeting Students’ Special Needs

ESTIMATE OF CURRENT ACCOMMODATIONS *

As Catholic schools enroll more students with disabilities, personnel should be trained in accommodating disabilities throughout the school... The following accommodations are listed as examples of ways in which Section 504 handicaps may be successfully addressed within the regular educational environment.

In my school / district these behaviors are Common.....Rare 1 - 2 - 3 - 4 - 5	ACCOMMODATIONS The teacher may want to:
Rating: _____ Comments:	COMMUNICATION <ul style="list-style-type: none"> - develop a daily / weekly journal between parent and school - schedule more frequent parent-teacher meetings - provide parents with duplicate set of tests - network with other staff - schedule building team meetings - maintain ongoing communication with the principal - communicate with outside agencies
Rating: _____ Comments:	ORGANIZATION AND MANAGEMENT <ul style="list-style-type: none"> - modify the class schedule - allow the student more time to walk the hallways - supply a study carrel in the classroom - change the student’s seat - increase / decrease opportunity for movement in classroom - reduce stimuli - discuss health parameters with parents - contact lunchroom if menu changes are requested
Rating: _____ Comments:	ALTERNATIVE TEACHING STRATEGIES <ul style="list-style-type: none"> - adjust testing procedures (especially length of time) - administer quizzes orally and tape record answers - individualize classroom and homework assignments - utilize technology (computers, calculators) - discontinue the use of dittos - vary materials (visual, tactile, auditory) - adjust reading level of material (especially social studies / science)
Rating: _____ Comments:	GRADING PROCEDURES <ul style="list-style-type: none"> - mark acceptable work, not mistakes - point out reversals and transpositions of letters for correction, not count them wrong - avoid placing the student under pressure of time or competition - accept typed homework assignments - repeat directions to the student after they have been given to class - allow the student to dictate answers to exams on cassette
Total Sum _____ / 4 = Overall Average: _____	COMMENTS

* Adapted from “Section 504 and Catholic Schools” (Schweinbeck, 2001 – p. 475-476)

Learning Consultant Model Principles

While addressing special needs does entail the allocation of financial resources, other non-cost factors are far more essential to the school's success with addressing special needs and with implementing the Learning Consultant Model. Success is dependent upon the entire school community -- faculty, administration, board, and parents -- owning the following principles. Accepting them is not enough; ownership implies valuing these principles and being willing to act on them by committing resources -- time, energy, talent, finances, and space.

- a) All students can learn.
- b) A student who learns differently is not inferior by virtue of that difference.
- c) All students have skills, talents, and gifts to offer to the school and classroom community.
- d) The uniqueness of the individual student is to be recognized, respected and valued.
- e) It is more appropriate and more productive to focus on ability and possibility than on disability and limitation.
- f) Acceptance and integration into school and parish life flow from a Catholic philosophy of education; rejection and isolation do not. Students with special learning needs can learn effectively in a regular classroom setting.
- g) In many cases, "pull out" programs impose an undue hardship on teachers and students and could actually be counter-productive.
- h) Special learning needs can best be addressed by relying on a variety of expertise utilizing a team approach involving teachers, parents, students, administrators, and Learning Consultants.
- i) The expertise and attention of a specialist is necessary to identify appropriate strategies, monitor progress, and facilitate communication.
- j) In the interaction between the Learning Consultant and the classroom teacher, interpersonal dynamics and communication skills are as important as knowledge and expertise in diagnosing learning problems and identifying strategies to address those problems.
- k) Classroom teachers have or can acquire the desire and the instructional and assessment skills to teach students with learning disabilities, attention deficits, and other types of special needs.
- l) Classroom teachers can implement the instructional and assessment adjustments necessary for students with special learning needs to be successful.
- m) The classroom teacher's willingness to take responsibility for addressing the student's learning needs and for using a variety of learning activities, assessments, materials, and resources is essential.
- n) The additional time classroom teachers spend in dialogue with the Learning Consultant will produce results in terms of teacher and student success and satisfaction.
- o) Instructional and assessment strategies implemented for special needs students will benefit many other students in the regular classroom.
- p) Support systems for the classroom teachers, the Learning Consultant, the administrators, the parents and the students are necessary for the Learning Consultant model to be successful.
- q) On-going and appropriate professional development for educators -- administrators, teachers, and Learning Consultants -- is absolutely necessary.
- r) Success will be achieved if all involved are flexible and focus on the strengths, talents, and needs of the students.

(Archdiocese of St. Louis, 2002)

TITLE 34 EDUCATION
SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION
CHAPTER I -- OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION
PART 104 -- NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR
ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE
Selected sections of Subpart D -- Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.

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

104.39 Private education.

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

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

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

104.34 Educational setting.

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

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

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

104.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

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

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

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

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

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

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

104.36 Procedural safeguards.

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

104.37 Nonacademic services.

(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

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

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

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

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

104.38 Preschool and adult education.

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

104.3 Definitions.

As used in this part, the term:

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

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

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

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

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

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

(k) Program or activity means all of the operations of--

(1) Qualified handicapped person means:

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

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

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

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

IDEA Partnership (www.ideapartnership.org)

Child Find:

- Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in Catholic Schools
- In carrying out the requirements of this section, the LEA (local educational agency, i.e. public school district) must undertake activities similar to the activities undertaken for the agency's public school children.
- Such child find process shall be completed in a time period comparable to that for other students attending public schools in the LEA.
- Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.
- The cost of carrying out child find, including individual evaluations, may not be considered in determining whether an LEA has met its expenditure obligations.

Ensure equitable participation:

- The child find process must be designed to ensure the equitable participation of parentally-placed private school children; and an accurate count of those children.

Each LEA must maintain records:

- The number of parentally-placed private school children evaluated;
- The number of such children determined to be children with disabilities; and
- The number of children served.
- An annual count is conducted on any date between October 1 and December 1
- The count is used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

No individual right:

- No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

Services plans:

- A services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under 34 CFR Part 300.
- The LEA must initiate and conduct meetings to develop, review, and revise a services plan for a child designated to receive services.
- The LEA must ensure that a representative of the religious or other private school attends each meeting. The LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls, if the representative cannot attend.

- The services plan must describe the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined through the consultation process described below that it will make available to its population of parentally-placed private school children with disabilities.

Consultation requirements:

- Consultation must be timely and meaningful.
- An LEA must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services regarding:
 - o How children suspected of having a disability can participate equitably; and
 - o How parents, teachers, & private school officials will be informed of the process.
- The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, & how this was calculated
- The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
 - o The types of services, including direct services and alternate service delivery mechanisms; and
 - o How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
 - o How and when those decisions will be made; and
- How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

Funding Requirements:

- Each LEA must spend an amount to meet its obligations to parentally-placed private school children with disabilities that is equal to a proportionate amount of Federal funds made available under the Act. Each LEA must expend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:
 - o For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

State and Local funds may **supplement** (not supplant) proportionate amount of Federal funds.

How services are provided:

- Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.
- IDEA does not prohibit on-premises services – Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
- If necessary for the child to benefit from or participate in the services provided under Part 300, a parentally-placed private school child with a disability must be provided transportation from the child's school or the child's home to a site other than the private school and from the service site to the private school, or to the child's home, depending on the timing of the services. LEAs are not required to provide transportation from the child's home to the private school.
- A public agency must control and administer the funds used to provide special education and related services under 34 CFR 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program. The public agency must ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility... No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

Requires written affirmation and provides a right to complain.

- When timely and meaningful consultation as required by 34 CFR 300.134 has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. If such representatives do not provide such affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the SEA.
- A private school official has the right to submit a complaint to the SEA that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

Personnel standards for parentally-placed private school children with disabilities:

- The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of 34 CFR 300.18.

SOURCE:

<http://www.ideapartnership.org/partnership5a3.cfm?audience=audiencec&osepid=27&osepparid=194>