

CHANCELLOR'S OFFICE LEGAL OPINIONS  
TITLE 5, SECTION 56044,  
OTHER DISABILITY CATEGORY

ISSUE: Title 5, Section 56044, Other Disability Category

ANALYSIS:

The purpose of this memo is to clarify the use of the "Other Disability" category established by Title 5, Section 56044. This category should be used where a student has a verified impairment that limits one or more major life activities and imposes an educational limitation, but the disability does not fit neatly into any specific categories set forth in Sections 56032-56042 (Physical Disability, Communication Disability, Learning Disability, Acquired Brain Impairment, Developmentally Delayed Learner, or Psychological Disability). This provision was added to Title 5 so that any student who has a current impairment which meets the definition of disability under the Americans with Disabilities Act can be served and reported for DSPS funding purposes.

In order to ensure that a student is properly reported in this category, the college must first verify that the student has an impairment which limits one or more major life activities. According to Section 56006(b), this can be done by observation, by assessment by DSPS staff, or by review of documentation provided by appropriate outside agencies or certified or licensed professionals.

Since we are talking about cases where the nature of the student's disability is unclear, observation is not an appropriate method of verification for this category. Most commonly, students will be placed in the "Other Disability" category based on documentation received from appropriate outside agencies or professionals, but it is also possible that DSPS professional staff could make this determination directly through assessments they conduct. Of course, as with any other student, it will also be necessary to verify that the student's impairment imposes educational limitations. This determination must be made by DSPS professional staff pursuant to Section 56006(c) and is to be documented in the student educational contract.

Finally, it is important to consider whether the student's impairment fits into any of the disability specific categories. Use of the "Other Disability" category is only appropriate after it has been determined that the student does have an impairment but that none of the disability specific categories are appropriate. An example of such a case would be a student who does not meet the criteria for either learning disability or developmentally delayed learner even though the student has documentation indicating that he or she was recently classified as learning handicapped in high school.

Alternatively, suppose that the student has no documentation or history of receiving services and that, after going through the LD assessment the LD specialist finds that the student does not qualify as learning disabled or as a developmentally delayed learner. If the LD specialist is nevertheless convinced that, in his or her professional judgment the student does have some type of impairment which limits one or more major life activities, then the student should be served and reported in the "Other Disability" category.